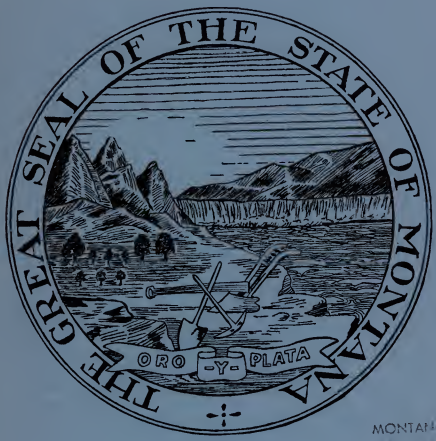
S
625.704
H3um
1977

STATE DOCUMENTS

DEC 13 1974

STATE OF MONTANA
DEPARTMENT OF HIGHWAYS



MONTANA STATE LIBRARY
930 East Lyndale Avenue
Helena, Montana 59601

UTILITIES MANUAL

250.1

Montana State Library
3 0864 1006 5951 8

PREFACE

Highway design standards have changed greatly since the advent of the horseless carriage. Similarly, utilities have made great progress since the day of the manual post auger. State Highway Officials and the Federal Highway Administration have adopted controlled access standards on our interstate system that have far-reaching effects on utility companies. Also, due to traffic, maintenance, snow removal and other highway responsibilities, state and county highways have required an ever increasing width of right of way greatly exceeding the standard 66-foot width that was originally set aside by our government for highway purposes. The widely varying construction limits of these newer highways create many and varied problems for utility companies and for the state.

This manual has been prepared to establish a clearer understanding of those policies and procedures by which utilities and highways may serve their users and progress together. Its purpose is not to dictate policy and procedure, but to delineate those policies and procedures now in use.

We hope, with the aid of further experience gained by working together, that the utilities and the state will be able to improve this manual and simplify their methods to better serve the people of this great state.

TABLE OF CONTENTS

Preface

1. Introduction 1-4

2. Utility Negotiation Procedures 5-20

3. Railroad Negotiation Procedures 21-27

4. Appendix 28-71

5. Montana Law and Legal Opinions 72-76

STATE OF MONTANA
DEPARTMENT OF HIGHWAYS

UTILITY MANUAL

PART I

INTRODUCTION & POLICY

UTILITY POLICY AND PROCEDURE MANUAL

Contents Part I

Page

1. Introduction 3

1.1 General Duties of Utilities Unit..... 3

1.2 Purpose of this Manual 3

1.3 Policy 4

1.3.1 Intent of Policy 4

1.3.2 Regulations Governing Occupancy of State Highway System Right of Way by Utility Facilities 4

UTILITIES UNIT

1. INTRODUCTION

1.1. General Duties of Utilities Unit

A. The Utilities Unit is a part of the Right of Way Section since it is in that section that the initial utility inspection and notification to the utility companies can best be expedited and early determination made of which utility conflicts will have to be eliminated or adjusted. At the same time as the right of way acquisition is started, utility negotiations can be initiated. This gives the utility companies a period of time in which to determine the supplies and work force which will have to be available to complete the necessary work. Since utility companies do not carry many items such as cable, poles, casing, etc. in their permanent inventories in sufficient quantities to take care of other than their own needs, it is necessary that these be ordered as early as possible because delivery dates may vary from three to six months after the initial order has been placed.

B. It is the duty of the Utilities Unit to see that the utility companies are alerted to new construction, supply them with preliminary plans, make inspections, form agreements, assist with estimates and generally act as a liaison officer between the Department of Highways and the utility companies.

It is also essential that utility companies keep the Utilities Unit informed of all planned new facilities and facility expansion, so this information can be used in highway planning. Utility companies will be encouraged to participate in field reviews with the personnel of the Highway Design Section and Utilities Unit.

1.2. Purpose of This Manual

1.2.1 To provide a clear statement of the Utilities Unit's Policy concerning the regulation of location, design, installation and adjustment of utility facilities within highway rights of way.

1.2.2 To help utility companies and others concerned to comply with State and Federal regulations, while suffering a minimum of interference to their normal business activity.

1.2.3 To outline clearly and in detail the actual procedures used by the Utilities Unit in the discharge of its duties.

1.2.4 To help personnel of the Utilities Unit in the course of their duties by providing necessary information in a single, compact and understandable volume.

1.2.5 Closely related subjects such as right of way, legal interpretations, surveys, plans and construction will, of necessity, be touched upon in this manual, but will not be covered in detail for obvious reasons. Manuals prepared by other sections of the Department of Highways may be obtained by those wishing detailed information not covered herein.

1.3 Policy

1.3.1 Intent of Policy

This policy is established to regulate the location, design methods of installation and methods of adjustment of utilities on all highways under the jurisdiction of the Department of Highways.

1.3.2 The current Regulations Governing Occupancy of State Highway System Right of Way by Utility Facilities are, by this reference, made a part of this manual.

STATE OF MONTANA
DEPARTMENT OF HIGHWAYS

UTILITY MANUAL

PART II

PROCEDURES

UTILITY POLICY AND PROCEDURE MANUAL

Contents Part II

		Page
2.	Procedures	7
2.1	Synopsis	7-11
2.2	Preliminary Requirements	11
2.3	Federal Reimbursement Regulations	11
2.4	Departmental Utility Design Policies	12
2.5	Federal Utility Accommodation Policy	12
2.6	Preliminary Utility Negotiations	12
2.6.1	General	12
2.6.2	Determining Location of Utilities	13
2.6.3	Determining Property Interests	13
2.6.4	Preliminary Highway Design Data and Information.	13
2.6.5	Governing Regulations	13
2.6.6	Preliminary Engineering and Planning	13
2.6.7	Use of Consulting Engineers	14
2.6.8	Investigation and Purchase of Right of Way	14
2.6.9	Disposition of Existing Utility Facilities	15
2.6.10	Restoration of Service to Properties	16
2.7	Maps	16
2.8	Utility Plan Preparation	17
2.8.1	State Assistance to the Utility	17
2.8.2	Plan Requirements	17
2.9	Preparation of Utility Cost Estimates	17
2.9.1	General Requirements	17
2.10	Approval of Consulting Engineer	18
2.11	Approval of Continuing Contractor	19

2. PROCEDURES

2.1 Synopsis

2.1.1 Highway projects are programmed initially in the preliminary engineering stage, through design, right of way acquisition, incidental construction (utility adjustments) and construction. The average time span for all stages is 3 to 5 years. The growth of the country, the related growth of utilities, and the impetus of the Interstate Highway Program make it evident that early contact with the utility companies should be made to avoid delays in construction caused by late utility adjustments. The utility adjustments and relocations should, ideally, be completed before bids are obtained on the construction contract. Only those adjustments which have to be coordinated with the contractor should remain.

2.1.2 The Utilities Unit should alert the utility companies to the fact that a survey is being made for proposed highway work and that the companies have facilities which will be involved. This letter is usually the first notice that the utility company will receive of a tentative highway project.

2.1.3 Prior to presenting a particular project to the Federal Highway Administration for program approval, the Utilities Unit will, upon request by the Plans and Program Unit, furnish an estimate of cost of the necessary utility relocations and adjustments.

2.1.4 The Utilities Unit will participate in map reviews and field reviews of planned projects to assist the Preconstruction Section in making determinations that are deemed necessary to advance the project and to help establish the simplest and most economical method of adjustment or relocation.

2.1.5 When program approval (to include preliminary engineering by utility companies) has been received from the Federal Highway Administration, and the project design has advanced to where the actual relocation and adjustment of utility facilities can be determined, the following steps are taken:

A. Submit plans to the utility companies. The companies are to receive utility plans, cross sections, plan and profile and detail sheets in accordance with article 2.7.1.

These sets of plans are to be used on the field inspection. The Utilities Unit will review the plans and notify the utility company of the date they will be making the inspection so the company can plan to have its representative meet a representative of the Utilities Unit for the inspection.

B. A "plan-in-hand" field review is made by representatives of the utility company, the Utilities Unit and the Division Construction Section's representative to establish the most satisfactory and economical method of adjustment. The review is made, not only to establish changes in the proposed utility relocation, but also to see if minor changes in road design will result in a more economical method of adjustment, offer more protection to the traveling public, and provide a more satisfactory method of maintaining utility facilities. The utilities on the plans should be checked against the actual facilities on the ground to make sure that all topography is correct. Location inside or outside of the existing right of way should be carefully checked at this time and if the existing right of way lines are not physically evident, a request to the Division Construction Supervisor by the Utilities Unit should be made to have them reestablished in order that a true picture of the facility in relation to the right of way may be obtained. A check of the utility encroachment permits in the Helena Headquarter's file and Division's file will be helpful in determining which utilities are on State right of way. There are cases, however, where utilities are on State right of way and are not aware of the fact and have never made application for an encroachment permit. It is often necessary to prove to the utility companies that they are encroaching.

The relationship of the utility to the right of way line is important since the State will pay 100% of the cost of the utility move when the utility company has a prior valid property right, easement or other instrument. In many cases, the utility is both on private right of way and State right of way. In this event, the cost to the State is developed on a proportionate share basis in the same ratio as the number of poles to be moved on private right of way is to the total number of poles to be moved on both private and State right of way. Pipeline and buried cable costs to the State are developed in the same manner, but on a footage basis. In instances where utilities are located on State right of way by virtue of a statutory right, the State will pay 75% of the cost to adjust the facilities in conflict. Where the problem is complicated by the necessity of adjusting several utilities and/or extensive adjustments, the utility companies are asked for as many alternate plans and estimates as are deemed necessary for review by the Utilities Unit. The review is held to establish the most economical method of adjustment, ease of maintenance, maximum protection to the traveling public, to avoid unsightly facilities along or over highways and to avoid unnecessary cost and difficulty of maintenance to the highway.

C. When all concur, the utility company is asked to make a formal and complete estimate, with detailed plans, establishing the method and manner of adjustment. The estimate will be checked by the Utilities Unit to see that the utility company has complied with the applicable sections of the

Policy and Procedure Memorandum 30-4. The estimate will be checked against the plans to see that quantities agree. The proposed relocation facility will be checked with design plans to see that it will not cause any conflict with construction. On interstate projects, the proposed relocation will conform to the "AASHO Policy on The Accommodation of Utilities on Freeway Rights of Way".

D. Upon receipt of approved plans and estimates, the Utilities Unit will prepare and present two original copies of the standard State-Utility agreement to the utility company for execution by proper officials. There are, generally, two types of utility agreements for reimbursement to the utility company. The first is used where cost to the State will be in excess of $5,000.00. This agreement is prepared on an audit basis and payment will be made only after the utility company's cost records have been examined and approved by the State's utility auditor. The second is used where cost to the State will be less than $5,000.00. The company here makes a request to have the cost which is shown in the estimate considered as a firm contract price for performing the work. Payment will be made in full after authorization has been given that the work has been completed by the utility company. Prints of the plan sheets showing the existing and new facility will be included in each copy of the agreement. Prints are color coded showing the existing facilities and the work to be done to accomplish the proposed relocation.

E. Upon receipt of the signed agreement from the utility company, the Utilities Unit will obtain the signatures of the designated highway officials. Two copies of the utility agreement are then forwarded to the Accounting Bureau for review by the utility auditor. Upon the return of the agreements, one copy is then sent to the Right of Way Attorney for inspection as to form and execution. He also reviews the agreement and renders a legal opinion concerning rights of reimbursement for utility adjustments based upon his review of the property interest documents attached to the agreement. A letter of transmittal thereafter will accompany four original, signed copies of the agreement to the Federal Highway Administration. Two copies of the agreement shall be marked "State Copy" for later return to the State. The letter of Transmittal to the Federal Highway Administration will request approval of the agreements and authorization to proceed with the work.

F. The Utilities Unit will, upon receipt of the two copies of the utility agreement marked "State Copy" showing Federal Highway Administration's approval and authorization, forward to the utility company one original and one facsimile copy of the fully executed agreement, together with a letter of transmittal.

The first original copy of the agreement is to be retained by the State. Three facsimile copies will be sent to the Division Construction Section of the Department of Highways and one facsimile copy of the agreement will be sent to the Construction Bureau. One facsimile copy of the agreement will be sent to the Accounting Bureau with the utility auditor's remarks attached to the agreement. The letter of authorization to the utility company or cooperative to proceed with the physical adjustments of the facilities comes from the Division Construction Section. (Note: It is of the utmost importance that the utility company realizes that use of contractual firms in making the adjustments must be a matter of record when the company has a continuing agreement with a contractual firm, and that it must have specific permission when using a contractual firm on a single contract in accordance with PPM 30-4. If a contractor is to be used, the company will, at some time prior to construction, submit a request to contract the work. Demonstration is needed that the letting of the contract was necessary because the utility company was not adequately staffed to perform the work with its own forces at the time of relocation. A copy of the contract proposal, together with a tabulation of bids, must be submitted to the State for acceptance. The Federal Highway Administration will also be requested to concur in approval of this request for all highway projects, except Secondary). Further details of this procedure are covered in Article 2.11.

G. When all utility relocation agreements have been completed, the Division Construction Section will prepare Joint Use Agreements or Common Use Agreements (RW 133) recognizing the utility company's previous property rights and continuing property rights to occupy the position it is in after relocation. Two (2) original copies of the agreement will usually be prepared unless the company has requested more than one copy. When the Common Use Agreement has been signed by the company, the Division Construction Section will send both originals to the Utilities Unit for review and approval. One original copy will be sent to the utility company, and one facsimile copy will be sent to the office of the Division Construction Supervisor and one facsimile copy will be sent to the Maintenance Division. The Division Construction Section will also process all "Notice of Utility Occupancy and Use of State Highway System Right of Way" agreements (RW 131). The utility company will not be allowed to begin physical construction of the new facility until approvals of all RW 131 and RW 133 have been obtained.

H. An Explanation of Utility Agreement Flow Chart Procedure through the Utilities Unit is further explained and shown in the Appendix under Article 1, Item A.

I. The Utilities Unit will keep itself informed of any changes that might occur in the right of way or design of the roadway sections and alignment and immediately inform the companies if the changes appear to conflict with the proposed utility relocations.

J. Every attempt should be made to have the project cleared of utilities prior to project award, but there will always be certain adjustments that have to be coordinated with project construction.

2.2 Preliminary Requirements

In utility adjustments, the first consideration must be that of establishing the eligibility for State reimbursement and Federal participation in all costs of the utility relocation.

Highway personnel must therefore delay requesting utility companies to prepare plans or estimates until such time as authority is received from the Federal Highway Administration to incur costs for utility adjustments. This release or authority is received by the Project Control Unit on Federal Highway Administration's Form PR-1, PR-9, "Request for Approval of Individual Project Program Change", (necessary before the highway project Preliminary Design Field Survey), together with a letter of authorization. Project Control, in turn, furnishes the information to all interested divisions. Costs incurred by a utility prior to issuance of this authority will not be eligible for reimbursement.

If preliminary engineering is to be performed for the utility by a consultant, prior approval of a project program for incidental construction for the use of said service must be obtained from the State and the Federal Highway Administration.

The cost incurred for replacement, relocation and/or adjustments will not be eligible for reimbursement until the utility agreement has been approved by the Federal Highway Administration, and the authority to proceed has been given by the State. In extreme emergency, permission may be given by the State withthe Federal Highway Administration's concurrence prior to approval and execution of the utility relocation agreement, when necessary materials require early procurement, or are in short supply.

The Federal Highway Administration will establish the date of eligibility for work to begin, but, normally, agreement approval and cost participation will govern.

2.3 Federal Utility Reimbursement Regulations

The regulations which fix Federal cost participation relative to utility work are contained in Policy and Procedure Memorandums 30-4 and 30-4.1, which, by this reference, are made a part of this manual. These PPM's not only prescribe procedure, but also establish controls and general requirements in regard to eligibility, agreement preparation and handling, plan and estimate preparation, credit for expired service life, developing and recoding costs, betterment and salvage values, reimbursement, billing and other items. Since State reimbursement is limited to the amount eligible for Federal participation under these regulations, it is necessary for personnel of the State and the utility companies to familiarize themselves with these regulations. Prior approval of the Federal Highway Administration

for prescribed phases of utility work is required. Unless these regulations are met, many otherwise eligible items may be declared ineligible for State and Federal participation. Particular attention is directed to the requirements regarding services of technical consultants, construction contracts and salvage materials.

2.4 Departmental Utility Design Policies

State design and placement policies applicable to utility installation are the responsibility of the Preconstruction Bureau, and Division Construction Section. The "Regulations Governing Occupancy of State Highway System Right of Way by Utility Facilities" contains the State's design and placement policies as adopted by the Department of Highways. Each adjustment shall be reviewed under the State's requirements, but, if an existing or proposed installation will not fully conform to State policy, it may be considered, on an individual basis, for possible exception. If an exception is considered warranted, all pertinent information should be submitted to the Utilities Unit for their recommendation. All irregular utility problems must be reviewed by the Federal Highway Administration's Division Engineer or his representative before final acceptance.

2.5 Federal Utility Accommodation Policy

By joint effort on the part of the members of the American Association of State Highway Officials (AASHO) and national representatives of the utility industry, a policy on "The Accommodation of Utilities on Freeway Rights of Way" was formulated and approved. This policy, which received prior approval from both the State and utility industry, was officially adopted by the Federal Highway Adminstration, and reflects the Federal Design and placement policy on Freeway Rights of Way. This policy is, by this reference, made a part of this manual.

2.6 Preliminary Utility Negotiations

2.6.1 General: There should be a constant flow of information and a continuous exchange of ideas between the State and the utility company to provide a maximum lead time. The utility adjustments should be made (and those adjustments requiring coordination with highway construction should be provided for) before a project is sent to the Contract Plans Unit for preparation of the contract. The goals for this phase are:

A. The adjustments shall be made in a way which will not delay the highway program.

B. Maximum safety will be given to the traveling public.

C. The adjustments shall be made in a manner which provides:

1. The most economy.

2. The least inconvenience.
3. The most protection to both the highway and the utility.

2.6.2 Determining Location of Utilities

The Preconstruction Section will furnish a set of utility maps, showing the location and types of the known utilities on each project, which will be presented to the utility companies. During the field inspection, the necessary additions or deletions will be made so the State will have an accurate map. (It is obviously impossible for the State to locate and map all underground facilities).

2.6.3 Determining Property Interests

The State's initial request for information from the utility companies will also request that they furnish the State a map or other descriptive documents of their property rights, including both occupied and unoccupied areas.

2.6.4 Preliminary Highway Design Data and Information

After the preliminary design of a highway project has progressed to the point that right of way requirements can be established, maps or sketches should be presented to the utility companies, so information may be exchanged and utility adjustments can be coordinated with highway design. The complexity of drainage structures, sewers, water lines and underground transmission lines in the urban areas makes it nearly impossible to produce an initial plan that is economical and yet will accommodate all utilities. (Here, again, it is essential that authority to proceed with preliminary engineering be given at the earliest possible date, so that eligible utility companies may be reimbursed for time and engineering spent in these early studies).

2.6.5 The utility companies should be provided with sufficient copies of Federal Highway Administration's Policy and Procedure Memorandum 30-4, as currently amended. The companies should become familiar with all the requirements relating to reimbursement for adjustments. It is imperative that the companies realize that practically all facets of adjustments and related work require prior approval of the Federal Highway Administration. The utility companies should be sure that preliminary engineering has been authorized.

2.6.6 Preliminary Engineering and Planning

<u>After authorization to incur preliminary engineering</u>, the utility may proceed with the plans for the required adjustment. Since State cost participation is limited to the most economical method of adjustment, within the fremework of good design requirements, the utility should determine the proper route and design of the proposed facility after a

joint field inspection and after engineering consultation with the Utilities Unit, the Preconstruction's representative and the Federal Highway Administrations representative. It is intended that all conflicts relating to economics, AASHO policies, design requirements and betterments be resolved at this stage of negotiation. It may be necessary for the utility to prepare alternate plans of adjustment in order to establish the most economical and suitable method of adjustment. When complex problems arise, job site studies should be arranged. Comprehensive engineering reviews should be accomplished at this stage, and detailed study should be made, with emphasis on coordination with the successful bidder on the highway contract, in order to avoid unnecessary delays. The moves should be sequenced to avoid delaying a major project.

2.6.7 Use of Consulting Engineers

Paragraph 5b of PPM 30-4 states, "Where a utility is not adequately staffed to prosecute the relocation, Federal funds may participate in the amounts paid to engineers, architects and others for required engineering and allied services, provided such amounts are not based on a percentage of the cost of relocation." This paragraph applies most frequently to those instances where a utility must engage a consulting engineering firm to perform engineering services, either all or part, for the preliminary, design and construction phases of an adjustment or relocation. Care should be taken to insure that no consultant charges are incurred prior to State and Federal Highway Administration approval. For detail procedure in obtaining consultant approval, see Article 2.10.

2.6.8 The utility will select the most economical route available for the adjustment. Necessary right of way will be purchased by the utility company, not the State. The cost of right ofway is a reimbursement item. The cost should be established by good appraisal practice. Most utility companies will not resort to condemnation; therefore, in rare instances, the State may include the additional right of way necessary for utility adjustments in the State's condemnation action. All costs of right of way must be supported by adequate documentation by the utility company.

Prior to negotiation, the utility shall establish the value of the rights it will acquire, and this cost shall be incorporated in the utility agreement estimate. Appraisal for the establishment of right of way costs is a part of preliminary engineering, but actual purchase of right of way cannot be accomplished until the utility agreement is approved by the Federal Highway Administration and authority has been granted by the State. Any purchase of right of way prior to the State's and the Federal Highway Administration's approval is ineligible for reimbursement.

2.6.9 Disposition of Existing Utility Facilities

Federal participation for utility work is governed by PPM 30-4, as currently amended. Paragraph 11 of PPM 30-4 provides that the utility company may receive reimbursement for removal cost subject to several conditions. This facet of utility relocation usually pertains to underground facilities; for example, it may be more economical to abandon an underground telephone cable or small diameter pipe in place, provided it does not interfere with highway construction, and will not later contribute to a road failure. The criterion for determining whether to abandon or remove a utility is weighing the cost of two categories: A. When existing facility is replaced, and B. When existing facility is not replaced.

A. Existing facility is replaced.

1. When the State determines that the existing facility cannot be allowed to remain in place, then the facility will be removed as per Paragraph 11g. If the utility company removes the facility, the cost will be reimbursable, and credit will be required for materials removed in accordance with Paragraph 11f(1).

2. When the State determines that the existing facility should not be removed, or will not have to be removed, no payment will be made to the utility, nor credit required from the utility. (A replacement facility is being installed; therefore, compensation is being made, and the utility is made whole).

B. Existing facility is not replaced.

When the existing facility or any portion thereof is not being replaced, the cost paid and the credits required for such existing facility are covered by PPM 30-4, Paragraph 11f(2). The following will govern for each condition:

1. When the State determines that the existing facility cannot be allowed to remain in place, then the facility shall be removed by the owner, except as covered under Paragraph 11g. The cost of removal will be reimbursable provided it meets with the requirements of Paragraph 11f(2), but no other costs will be paid. (This is based on the fact that the facility is the property of the utility).

2. We rarely encounter the situation where the facility is not removed, and each case must be considered on its own merit. The property rights of the utility company must be considered.

2.6.10 Restoration of Service to Properties

A. The State's participation in the restoration of service to properties will be determined on the basis of whether the property was a whole take or a partial take. If the service was to a property that was taken in total, the State will participate in the cost of removal, in accordance with Paragraph 11f(2), and the State will not reimburse the utility company for any installation of new lines.

If there is a partial take of property within the proposed right of way, and there is an existing service to improvements on the property, the State will participate in the cost of providing new service, and the State will be given credit for salvage.

B. Where highway construction disrupts utility service to an improvement outside the service area, restoration of service is eligible for State participation.

2.7 Maps

The Utilities Unit will arrange for the delivery of the following maps to each utility company involved.

2.7.1 Utility Maps and Other Related Material

A. Utility maps

The number of prints will depend on the number of utilities involved. In all cases, three prints will be needed for the Division Construction Section and two prints will be needed by the Utilities Unit. The following is a list of the utilities most likely to be encountered and the number of prints to be added for each different utility involved:

The Montana Power Company	6 prints
Other private power companies	3 prints
Rural electric	2 prints
Gas	3 prints
Telephone	3 prints
Rural telephone	2 prints
Water	2 prints
Sewer	2 prints

B. Other Related Material

In addition to prints of the utility plans, it is necessary, to supply the Utilities Unit with one print of road plans, cross sections, and typical sections. In the event that cross sections are not prepared for the project, the Utilities Unit must

be furnished with one set of I.B.M. cross section data.

2.8 Utility Plans Preparation

2.8.1 State Assistance to the Utility

Preparation of the plans delineating work to be accomplished is the responsibility of the utility company. The utility company's engineering staff must plan and design the proposed facility. The State, however, should render assistance by providing the utility company with highway design data (i.e. grades, profiles, structures, alignment, cross sections, etc.), as well as right of way information (such as right of way widths and control of access lines) and other standard requirements.

Emphasis should be placed on the coordination and free flow of information between the authorized representatives of the State and the utility company.

2.8.2 Plan Requirements

A. Procedure

Paragraph 7b of PPM 30-4 requires that the utility agreement be supported by a plan which will be sufficiently informative and complete to provide a clear and concise picture of the adjustments and removals to be made. Paragraphs 7h and 7i of PPM 30-4 require supporting plans or drawings for the utility relocation shall be sufficiently informative to provide a clear picture of the work to be done.

2.9 Preparation of Utility Cost Estimates

2.9.1 General Requirements

A. The cost estimate shall be prepared by the utility company, and submitted to the Highway Department in support of the work of the utility agreement and required plans.

B. The completed agreement shall include the agreement, plans and estimate, and should show or recite the portions of the adjustment necessitated by highway construction and those for which the utility is requesting reimbursement with proof of a valid existing prior property right. Where the adjustments are in segments, the estimate may be assembled so that the cost of each segment can be identified.

C. The agreement shall recite that total cost of adjustments, with major subtotals for the cost for those necessitated by highway construction, those eligible for reimbursement, and those to be done at the expense of the company.

D. All estimates will be prepared in conformance with PPM 30-4, as amended. Paragraph 7h of PPM 30-4 is quoted as follows: "The estimate in support of the agreement shall set forth the items of work to be performed, broken down as to estimated cost of labor, construction overhead, materials and supplies, handling charges, transportation and equipment, right of way, preliminary engineering and construction engineering, including an itemization of appropriate credits for salvage, betterments, and expired service life, all in sufficient detail to provide the State and the division engineer a reasonable basis for analysis. The factors that will be included in the utility's construction overhead account shall be set forth. Materials are to be itemized where they represent relatively major components or cost in the relocation. Unit costs, such as broad gauge units of property, may be used for estimating purposes where the utility uses such units in its own operations."

   Paragraph 14b of PPM 30-4 states that the final billing will follow as closely as possible the order of items in the estimate portion of the agreement and the totals for labor, overhead, construction costs, travel expense, transportation, equipment, materials and supplies, handling costs, and other service shall be shown in such a manner as to permit comparison with the approved estimate.

E. A sample copy of a utility estimate which is acceptable to the Utilities Unit has been included in the Utility Manual in the Appendix, Article 1, Item 1.

2.10 Approval of Consulting Engineers

The use of a consulting engineer by a utility company is acceptable as previously noted in Article 2.6.7. The method by which the utility company obtains the approval of the consultant by the State and Federal Highway Administration is as follows:

A. When it has been determined by the utility company that it is not adequately staffed to prosecute the utility relocation, the utility company may select a consulting engineer of its choice.

B. The consulting engineer who has been selected must, on the basis of the highway plans and utility company's knowledge of the work to be accomplished, prepare an engineering estimate. This estimate should indicate the consultant's total cost to accomplish the needs of the utility company. Engineering estimates are not acceptable if they are based on a percentage of the cost of relocation. A sample copy of an acceptable engineering estimate is attached to the manual in the Appendix, Article 1, Item H.

C. The utility company, after receiving the engineering estimate, forwards it to the Utilities Unit, together with a letter of transmittal. Demonstration is needed that the utility company will not be adequately staffed or equipped to perform the work with its own forces at the time of the State's request for utility relocation.

D. The Utilities Unit will process the utility company's letter and the engineering estimate for acceptance by the State and Federal Highway Administration. Four copies of the letter and estimate are compiled and forwarded to the Federal Highway Administration for review and approval. Two copies of the transmittal are stamped, "STATE COPY", for return to the State with Federal Highway Administration's approval.

E. Upon the return of the two Federal Highway Administration's approved "STATE COPIES" of the engineering estimate, the State forwards an original and one facsimile copy of the approved estimate to the utility company, together with a letter of transmittal. The letter of transmittal will authorize the utility company to begin using the consultant for engineering services. One original copy will be retained in the Utilities Unit's file, one facsimile copy will be sent to the consultant, three facsimile copies will be sent to the Division Construction Section and one facsimile copy to each of the Construction and Accounting Bureaus. Consultant charges which are incurred prior to the date of the State's authorization for the use of the consultant are ineligible for reimbursement by the State.

F. It must be understood that the State's and Federal Highway Administration's approval of a consultant for the utility company is valid only for the initial project for which the engineering estimate was prepared. Individual approval of a consultant and engineering estimate must be obtained for each and every highway project.

2.11 Approval of Continuing Constractor

The use of a continuing contractor by a utility company is acceptable as previously noted in Article 2.1.5 F. The method by which the utility company obtains the approval of a continuing contractor by the State and Federal Highway Administration is as follows:

A. Compliance with Paragraphs 5 and 6 of PPM 30-4 is necessary to obtain approval of utility work by forces other than by utility companies.

B. In the case of engineering work performed under existing continuing contracts which are less than $5,000 (Paragraph 5b(2) of PPM 30-4) demonstration should be made that the engineering service is regularly performed for the utility in its own work under such contracts at reasonable costs.

C. For work done under a continuing labor contract, demonstration

that such work is regularly performed for the utility company under such contracts at reasonable cost is needed for State's and Federal Highway Administration's approval of the continuing contract method. It is required that the Federal Highway Administration approve the continuing contract and the method of performing the work.

D. The utility company which presently has a continuing engineering or labor contract with an organization may request authorization to use these services in connection with adjustment of utilities on highway projects. In that event, the utility company, by a letter of transmittal, should forward the original copy of the continuing contract to the State for review and approval. The letter of trasmittal must include the appropriate information requested under B & C above.

E. The Utilities Unit will process the continuing contract for acceptance by the State and the Federal Highway Administration. Four copies of the contract are compiled and forwarded to the Federal Highway Administration for review and approval. Two copies of the contract are stamped "State Copy" for return to the State with Federal Highway Administration's approval.

F. Upon the return of the two Federal Highway Administration approved "State Copies" of the contract, the State forwards the original and one facsimile copy of the approved transmittal. The letter of transmittal will authorize the utility company to begin using the services of the consultant on any future projects involving highway work. One facsimile copy of the contract will be retained in the Utilities Unit's file, one facsimile copy will be sent to the Continuing Contract firm, three facsimile copies will be sent to the Division Construction Section and one facsimile copy each to the Construction and Accounting Bureaus. Contractor charges which are incurred prior to the date of the State's authorization for the use of the contractor are ineligible for reimbursement by the State.

G. The State and the Federal Highway Administration's approval of a continuing contract for the utility company is valid for any future highway project unless the contract is declared invalid. It must be remembered that any up-grading in the continuing contractor's unit prices after the initial approval of the contract must be approved by the State and the Federal Highway Administration before they are eligible for reimbursement by the State.

STATE OF MONTANA
DEPARTMENT OF HIGHWAYS

UTILITY MANUAL

PART III

RAILROAD NEGOTIATIONS

UTILITY POLICY AND PROCEDURE MANUAL

CONTENTS PART III

		Page
3.	Railroad Negotiation Procedures	23
3.1	General	23
3.2	Federal Utility Reimbursement Regulations	23
3.3	Preliminary Railroad Negotiations	23
3.4	Railroad Application Maps	23
3.5	Railroad Application Procedure	24
3.6	"Plan-in-Hand" Field Inspection	25
3.7	Explanation of Flow Chart Procedure of Railroad Agreements, Easements & Estimates	26
3.8	Processing Railroad Agreements	26

3. RAILROAD NEGOTIATION PROCEDURES

3.1 General

Negotiations with Railroad Companies are necessitated when highway construction is carried across the company's right of way or may encroach upon company right of way in any fashion. The difficulties encountered in these negotiations vary greatly and are not easily predetermined.

3.2 Federal Utility Reimbursement Regulations

The regulations which fix Federal cost participation relative to railroad work are obtained in Policy and Procedure Memorandum 30-3 which is, by this reference, made a part of this manual. This PPM not only prescribes procedures, but also established controls and general requirements in regard to eligibility, agreement preparation and handling, plan and estimate preparation, developing and recording costs, betterment and salvage values, reimbursement, billing and other items. Since State reimbursement is limited to the amount eligible for Federal participation under these regulations, it is necessary for personnel of the State and the railroad companies to familiarize themselves with these regulations.

Prior approval of the Federal Highway Administration for prescribed phases of railroad work is required. Unless these requirements are met, many otherwise eligible items may be declared ineligible for State and Federal participation.

3.3 Preliminary Railroad Negotiations

The first move made by the Utilities Unit in such matters is that of informing the Railroad of any plan to cross or encroach upon their property. This notification frequently precedes preparation of even the preliminary plans and will often be nothing but a letter stating that there is thought being given to construction that will possibly involve the Railroad. The Utilities Unit has found such notice to be appreciated and final agreement much easier to achieve. At this point, it should be noted that the State gives notification to the company's main office, as well as the Regional Office involved.

3.4 The usual type of application to the Railroad Company will involve forwarding one set of marked-up highway right of way drawings, showing in colors, the encroachments on Railroad right of way, one set of plan and profile highway maps, and one set of highway cross sections in the vicinity of the Railroad's encroachments. In the event that cross sections are not available, one set of the I.B.M. cross section data is usually substituted.

The number of prints required per project will vary, depending on the number of railroads involved and which railroad is involved. For each railroad involved on a particular project, one print of the right of way plans, one print of road plans and cross section

will be needed for the Division Construction Section and one complete set of prints of the right of way maps for the entire project will be needed by the Utilities Unit. The following is a list of the railroads most likely to be encountered and the number of prints required for each different railroad involved:

Name of R.R.	R/W Plans	Road Plans	X-Sections
Burlington Northern Inc.	6	3	3
Union Pacific	5	4	4
B. A. & P.	5	2	2
Milwaukee	7	4	4

Number of prints of the road plans should include plan and profile sheets of the encroachment area, title sheet and typical sections.

The Utilities Unit will receive the appropriate copies of railroad application maps, cross sections and road plans from the Preconstruction Section, together with a memorandum of transmittal.

The above maps are to be used by the railroad company for the preparation of their estimates and exhibits, as well as for a plan-in-hand field review with their representatives and representatives of the Federal Highway Administration, Utilities Unit and Division Construction Section of the Department of Highways.

3.5 Railroad Application Procedure

There are several types of agreements with Railroad Companies; very similar in the most part, but quite dissimilar in certain respects. The following are a few of the cases covered in Company and State agreements:

Case #1 covers the widening of an existing at-grade crossing. If there is any existing or new signal placement at the existing at-grade crossing, a separate agreement is generally initiated and processed by the Utilities Unit. This agreement must cover the removal of existing standard signals, if any, and if the new width will carry four lanes of travel, these signals must be replaced with cantilever arm signals. If the new width will still carry only two lanes of travel, the existing signals may be adjusted and perhaps be reconditioned. The cost of constructing the revised crossing (omitting signals) is reimbursable and this agreement is also initiated and processed by the Utilities Unit. The agreement or agreement exhibit should refer to the surfacing to be used in the crossing. There will be attached to this agreement Exhibit "A" (maps and drawings), "B" (estimate of cost, omitting signals) and "C" (standard insurance form; same in all cases). Should the insurance form not be attached, it is because it is in standard use, thus making its attachment unnecessary. Mention of the easement, as needed in the State's widening project, may be made in the construction agreement as it is frequently handled, and generally paid for, separately. The easement agreement is also initiated and processed by the Utilities Unit.

Case #2 is the case of a newly located at-grade crossing and the signal agreement, as initiated and processed by the Utilities Unit, should cover the cost and need for flashing light signals if there will be a need and, as in Case #1, cantilever arm signals provided if there will be four lanes of highway travel. The construction agreement, initiated and processed by the Utilities Unit, will cover the reimbursement for any company cost necessitated by such a new crossing (omitting signals). In Case #1, mention of the necessary easement may be made in the construction agreement. The easement agreement is also initiated and processed by the Utilities Unit.

Case #3 covers Separation Structures. The structure construction agreement, as initiated and processed by the Utilities Unit, grants the State the right to construct a structure on railroad right of way and covers reimbursement for any cost to the company necessitated by construction of the structure. Mention of the easement, as needed for the structures and approaches, may be made in the construction agreement. The easement agreement is also initiated and processed by the Utilities Unit.

Case #4, covers longitudinal right of way for roadway encroachments on railroad right of way. The cost to the State, of railroad right of way, is usually a negotiated matter and must be approved by the Appraisal and Negotiation Unit of the Right of Way Section. The Right of Way Section handles the payment of these costs and furnishes appraisal service. The Property Description Unit, when needed, assists in the preparation of legal descriptions used in the transfer of property. The easement agreement form used in right of way transactions will usually consist of plats and legal descriptions in the case of land acquisition.

In cases of gaining a construction permit for cut or fill slopes, the agreement may consist of only a letter attached to a layout showing the area of encroachment. In other cases, the Railroad may require the usual form of easement agreement.

3.6 "Plan-in-Hand" Field Review

The Utilities Unit will review the railroad application plans and notify the Railroad Company of the date they will be making the inspection so the company can plan to have their representative meet a representative of the Utilities Unit for the inspection.

A "plan-in-hand" field review is made by representatives of the involved railroad, the Utilities Unit and the Division Construction Section's representative to establish the most satisfactory and economical method of adjustment. The review is made not only to establish changes in the railroad facilities, but also to see if minor changes in road design will result in a more economical method of adjustment. The railroad facilities on the plans should be checked against the actual facility on the ground to make sure that all topography is correct. Location inside or outside of the existing right of way should be carefully checked at this time and if the existing right of way lines are not physically evident, a request to the Division Construction Section by the Utilities Unit should be made to have them reestablished in order that a true picture of the

facility in relation to the right of way may be obtained.

The State will pay 100% for the cost of constructing or adjusting railroad facilities when the Railroad Company has a prior valid property right, easement or other instrument. In cases where the Railroad does not have a valid property right, easement or other instrument, the Railroad will be advised by the Utilities Unit or property owner to remove or adjust their facilities to accommodate the proposed highway construction at no cost to the State.

When the plans are acceptable to all concerned, the Railroad Company is then asked to make a formal and complete estimate, with detailed plans, establishing the method and manner of their adjustment. The estimate will be checked by the Utilities Unit to see that the Railroad has complied with the applicable sections of the Policy and Procedure Memorandum 30-3.

3.7 Explanation of Flow Chart Procedure of Railroad Agreement, Easement and estimate

Explanation of Flow Chart Procedure of Railroad Agreement, Easement and Estimate through the Utilities Unit is further explained and shown in the Appendix under Article 11, Item A.

1. The Utilities Unit will keep itself informed of any changes that might occur in the right of way or design of the roadway sections and alignment and immediately inform the companies if the changes appear to involve the proposed railroad adjustments.

2. Every attempt should be made to have the project cleared of railroad involvement prior to project award, but there will always be certain adjustments that have to be coordinated with project construction.

3.8 Processing Railroad Agreements

The preparation of all railroad agreements is taken care of by the involved Railroad Company. The agreements in duplicate, are then forwarded by the Utilities Unit for approval. All exhibits are prepared by the company.

Upon the State's receipt of the duplicate agreements, sufficient verifax copies are made to allow distribution to the various sections of the Highway Department for review and acceptance. This distribution is as follows:

Property Description Unit	1 copy
Right of Way Attorney	1 copy
Preconstruction Section	1 copy
Bridge Section (in special situations)	1 copy

When acceptance and/or comments of the agreements are received from the above distribution, a determination has to be made as to whether or not to execute the agreements. If the comments are minor in nature, the Utilities Unit secures the signatures of the Right of Way Section Supervisor and Utilities Manager. If the comments are such that a

revision must be made to the agreement before it can be executed by the Highway's officials, it is then returned to the offices of the Railroad Company with a request for revision. If the revisions are not readily agreed to by the Railroad Company, the changes are then negotiated until an acceptable agreement can be returned to the State for signature.

After an acceptable agreement has been executed by the State, the duplicate copies are returned to the company for their execution and a usual request is made for the return of one of the original fully executed copies of the agreement, plus ten verifax copies of the fully executed agreement.

Upon receipt of the returned, signed agreements, the Utilities Unit determines whether the agreement should be sent to the Federal Highway Administration for their approval. If the railroad agreement is strictly an easement agreement conveying land to the State, there is no need to forward it to the Federal Highway Administration for their approval. However, any agreement which contemplates any construction work to be done by the Railroad's forces or representatives must have prior approval by the Federal Highway Administration before the work can be accomplished with Federal participation. Four copies of the agreement, with a transmittal letter is sent to the Federal Highway Administration. Two copies of the agreement are marked, "State Copy", for execution by the Federal Highway Administration and return to the State. The other two copies are to be retained by the Federal Highway Administration for their files.

When the agreement has been signed and returned by the Federal Highway Administration, the Utilities Unit makes additional copies, if necessary, and distributes them as follows:

Right of Way File	1 original(constr. agreement) 1 original, 3 verifax and 1 extra copy of exhibit portion. (easement agreement)
Div.Constr.Sec. File	3 verifax(constr. or easement agr.)
Constr. Bureau	1 verifax(constr. or easement agr.)
Acct. Bureau	1 verifax(constr. or easement agr.)
Contract Plans Unit	1 verifax(constr. or easement agr.)

The Division Construction Section Supervisor is advised at the time he receives his copies of the agreement that he may, when applicable, authorize the Railroad Company to proceed with their work.

After distribution of agreements, no further action is required by the Utilities Unit.

STATE OF MONTANA
DEPARTMENT OF HIGHWAYS

UTILITY MANUAL

PART IV

APPENDIX

APPENDIX INDEX

CONTENTS

I. Utility Agreements

A. Explanation of Utility Agreement Flow Chart Procedure 31

B. Office Procedure for Initiating and Processing Utility Agreements ... 32-34

C. Responsibility and Procedure for Preparing Utility Plans for Utilities Unit by Preconstruction Section 35-38

D. Utility Agreement form 39

a. State of Montana Department of Highways Utility Agreement 40-42
b. Waiver of Hearing form 43
c. Expired Service Life Credit form 44

E. Statement of Utility Property Interest 45

F. Certificate - Utility Company Property Interest 46

G. Estimated Cost of Incidental Construction form 47

H. Consultant Engineering Estimate-Sample 48-49

I. Sample Outline for Utility Estimate and Bills 50-52

J. Payment for Relocation of Utility Facilities - General Rules 53

K. Locked Gates for Utility Access from Interstate - Letter Dated February 26, 1968 54-55

a. Locked Gate Request for Utility Access from Interstate form 56

L. Common Use Agreement (Form RW 133) 57-59

M. Notice of Utility Occupancy and Use of State Highway System Right of Way (Form RW 131) 60

N. Supplemental Agreement for Occupancy and Use of State Highway System Right of Way (for use with Government Agencies and Municipalities) 61-62

O. Tabulation and status Report of Utility Agreement for Right of Way Certification form 63

P. Division Utility Agents - Letter Dated June 16, 1969 64-65

11. Railroad Agreements

A. Explanation of Flow Chart Procedure of Railroad Agreement, Easement and Estimate 66-67

B. Responsibility and Procedure for Preparing Railroad Plans for Utilities Unit by Preconstruction Section 68-71

Explanation of Utility Agreement Flow Chart Procedure

1. Upon completion of a respective design, the Utilities Unit is furnished utility plans by the Preconstruction Section. Sufficient plans are furnished to provide at least two sets to each utility company involved, including the Utilities Unit.

2. If IC money is programmed and approved, the utilities involved are furnished plans with a letter of transmittal arranging for a joint field inspection.

3. At a predetermined date, a joint inspection is made with a representative of the Utilities Unit, representatives of utility companies involved and a representative of the Division Construction Section to mutually determine adjustments required to clear construction limits.

4. After determining approximate relocation costs, either by actual field engineering or plant experience records, an estimate is submitted by each utility involved. Estimates are formulated according to the requirements of Federal Highway Administration's PPM 30-4.

5. A review is made of each estimate as to arithmetic, right of way status, participation costs and compliance with PPM 30-4. Any irregularities are made known to either the utility or to the Federal Highway Administration, or both, and corrections are made accordingly.

6. After the estimate is considered acceptable, a standard agreement form is prepared and submitted to the utility for signatures. Upon return to the Utilities Unit, the agreement is approved by the Department of Highways.

7. The agreement is then forwarded to the Highway's Accounting Bureau for its approval after which it is forwarded to the Right of Way Attorney for his review and legal opinion of property rights and then forwarded to the Federal Highway Administration for final approval.

8. When the agreement is returned to this office, ample copies are made to distribute; two to utility company; three to Division Construction Section; one to Construction Bureau; and one to Accounting Bureau. The original is placed in the files of the Utilities Unit.

OFFICE PROCEDURE FOR INITIATING AND PROCESSING UTILITY AGREEMENTS

NOTE: Record all progressive steps of each utility agreement on utilities progress cards.

COST ESTIMATES

1. Check the company's cost estimate for accuracy in computations.

2. Check the map against cost estimate to determine if number of relocations has been accurately totaled. Make notation on map to indicate how many relocations are on private right of way and how many are on public right of way.

3. Stamp "EXHIBIT A" on cover letter accompanying the company's estimate.

4. Stamp last sheet of estimate with the Utilities Unit's approval stamp and date stamp. Obtain the signature of the Utilities Unit Manager. (in his absence, the Right of Way Section Supervisor will sign).

5. If the utility company does not provide sufficient maps, (8 sets for the Interstate and Primary Highway projects and 6 sets for Secondary Highway projects), have original map reproduced.

MAKING UP UTILITY AGREEMENT

1. After the estimate has been signed, make up the utility agreement as follows:

   a. An original and four copies ofthe three page agreement. Check to see if project number and designation are listed accurately. Total estimated cost and cost to the State and company are obtained from the company's cost estimate. (Note: The Montana-Dakota Utilities Co. requires two additional facsimile copies of the agreement, Waiver of Hearing and Agreement forms and the cost estimate at the time the agreement is sent out for signature).

   b. Make one copy each of the Waiver of Hearing and Agreement forms (one page each).

   c. Duplicate cost estimate and cover letter (9 copies for Interstate and Primary and 7 copies for Secondary). (2 extra for Montana-Dakota Utilities Co.).

   d. Assemble agreements, attaching copies of the cost estimate and letter. Retain remaining copies of cost estimate for later distribution.

2. Send two copies of the agreement to the company for signature. If necessary, request time schedule and additional maps. If relocation involves private right of way, request that right of way documents be furnished.

RECEIPT OF SIGNED UTILITY AGREEMENT FROM COMPANY

1. Stamp original and first copy of agreement with "STATE COPY".

2. Stamp last sheet of agreement with Utilities Unit's approval stamp and date stamp (all five copies). Attest to signature on agreement form.

3. Obtain signatures of Utilities Unit Manager and Right of Way Section Supervisor (in that order) and then take all copies to the Accounting Bureau for approval.

4. When the agreements are returned from the Accounting Bureau, record date on progress card. If private right of way is involved, the Right of Way Attorney must give an opinion on the evidence furnished by the company.

   a. Upon receipt of opinion, make out "Certificate-Utility Company Property Interest"; duplicate, making nine copies; attaching one copy to each utility agreement and retaining balance for later distribution.

5. Agreements are now ready to be sent to the Federal Highway Administration for approval. Agreements on Secondary Highway projects are now ready for final distribution.

OBTAINING FEDERAL HIGHWAY ADMINISTRATION'S APPROVAL OF UTILITY AGREEMENTS

1. Duplicate all necessary documents to conform to attachments to original agreement. (This should include the Waiver of Hearing, Agreement, Right of Way Attorney's opinion, Certificate of Property Interest, Right of Way documents furnished by company, etc.). Duplicate enough copies for final distribution.

2. Attach the utility maps and send the original and three carbon copies of the agreement to the Federal Highway Administration. Retain a fifth copy with remaining duplicated documents. The Federal Highway Administration will retain two copies when they return the approved agreement to us for distribution.

RECEIPT OF APPROVED UTILITY AGREEMENT FROM FEDERAL HIGHWAY ADMINISTRATION

1. Make six copies of original utility agreement and seven copies of the original Federal Highway Administration's approval sheet.

2. Assemble eight complete sets of utility agreements and attachments. All should conform to original agreement. Do not duplicate approval sheet received from Accounting. This approval sheet is

returned to Accounting with their copy of the completed agreement.

3. Distribute the utility agreements as follows:

   a. Retain original for files.
   b. Duplicate original and one copy to utility company.
   c. Three duplicate copies to Division Construction Section.
   d. One copy to Construction Bureau
   e. One copy to Accounting Bureau

RESPONSIBILITY AND PROCEDURE FOR PREPARING UTILITY PLANS FOR UTILITIES UNIT BY PRECONSTRUCTION SECTION

The recent processing of State agreements and plan approval associated with State Highway projects indicates the need to develop and set down in writing precisely who should take what action in handling utility involvements.

In accordance with this need, the following procedure is presented for your consideration and subsequent action necessary to make it operational.

1. Utility Involvements

A. Utility Field Notes It is the responsibility of the Preconstruction Section to obtain from the field the necessary field notes to prepare an accurate summary of the utility conflicts with highway construction. Therefore, the utility field notes for existing utilities should be as complete as possible. These notes are used in the preparation of the "brownline utility plans". The omission of any utility information from the notes will result in the delay of processing future utility agreements and the needless expenditure of highway funds. The receipt of any field notes that are not considered adequate to present a clear, concise and complete picture of the utility situation for a given project should be returned to the appropriate Division Construction Section for further field investigation and survey work. All power and telephone poles, anchors, etc. must be "called out"; that is, the station they are opposite and the distance right or left of the centerline must be given.

When power or telephone lines cross the highway centerline, the centerline station, number of wires and clearance above the present ground elevation must be given. This same information, with the exception of the clearance above the present ground elevation, must be furnished for all utilities which parallel the intended highway and which will possibly be in conflict with proposed highway construction.

All telephone, power poles, etc. should be labeled as to the company or private individuals owning them. This information is available from the local residents and from personnel of the various utility companies and cooperatives. In many instances, the utility-like facilities such as television cables, private telephone exchanges, and private power facilities will be encountered. Similar information must be provided for these facilities in order to process their adjustment as a right of way item.

When gas, water or sewer lines cross the centerline, the centerline station must be given, together with type of line, size, depth of pipe from natural ground line and the ownership of the line. Similar information must also be furnished for all of the underground facilities such as private water and sewer line service facilities, telephone cables, power cables, television

cables, utility conduits, etc. If similar utility facilities belonging to two different companies are close together, each facility should be labeled as to the company owning it.

B. Road Designer Responsibility It is the responsibility of the road designer to see that the Utilities Unit is furnished with accurate and complete utility maps. These maps must contain all of the information provided by the utility field notes. Any omissions or misinformation recorded on the utility maps will ultimately result in additional utility field inspections and thus delay in processing the utility agreement and needless expenditures of highway funds. The designer will see that the utility maps conform with the latest road plans and any changes in alignment, additions and revisions to the road plans must be reflected therein.

It will be the road designer's ultimate responsibility, before submission of road plans to Contract Plans Unit, to see that appropriate action has been taken to provide for the adjustment of all utility, utility-like facilities, etc. which are in conflict with proposed highway construction, or which are in such close proximity as to be likely to be damaged by highway construction. As the various utility agreements for a project are concluded the Utilities Unit retains copies which are available for use by the road designer. It is necessary that the road designer thoroughly investigate each project to see that all of the anticipated utility conflicts are handled on the basis of utility agreements, contract items or right of way items. Failure to do this might well result in a delay or awarding a project to contract.

C. Common Means of Processing Utility Conflicts Utility maps are generally prepared by making "brownlines" from the right of way original maps. On these brownlines", the information contained within the utility field notes is plotted and "called out". Poles, anchors, etc. located within the construction limits are to be circled to indicate to the Utilities Unit that they are in conflict with highway construction and will probably have to be adjusted. All utility facilities may not have been shown on the plan sheets when they are photographed to make right of way linens.

Therefore, a careful check will have to be made to see if additional topog notes have been received.

When the utility "brownlines" have been completed, the necessary prints should be made for the Utilities Unit for the utility field inspection. These prints should not be made and forwarded to the Utilities Unit until after the final road plan-in-hand inspection has been made and appropriate changes made to the road plans and utility plans. The number of utility prints to be furnished to the Utilities Unit will depend on the number of utilities involved. In all cases, three prints will be needed for the Division Construction Section and two complete prints for the entire project will be needed by the Utilities Unit.

The following is a list of the utilities most likely to be encountered and the number of prints to be added for each different utility involved.

Power Company	6 prints
Rural Electric	2 prints
Gas	3 prints
Telephone	3 prints
Rural Telephone	2 prints
Water	2 prints
Sewer	2 prints

In addition to prints of the utility plans, it is necessary to supply the Utilities Unit with one complete print each of road plans, cross sections, and typical sections for the entire project.

The road designer should forward the appropriate copies of utility maps, cross sections and road plans, together with a memorandum of transmittal, to the Right of Way Section Supervisor, attention Utilities Unit for their use in making utility agreements.

1. Utility Relocation Contracts The receipt of the utility plans by the Utilities Unit will allow them to arrange for a field inspection with representatives of the utility company division and headquarters' Utilities personnel. At the time of this inspection, the method of adjusting the conflicting utility facilities will generally be determined. In some instances, the utility companies will request additional time to investigate the problems in order to advise the highway of the best solution. In any event, the Utilities Unit will advise: (1) the Right of Way Section, regarding those facilities which must be handled as right of way items; (2) the Preconstruction Section, regarding those facilities which must be handled as construction items. The usual utility facilities will be handled as utility conflicts in accordance with PPM 30-4 and amendments thereto. As indicated above, copies of the utility agreements, as they are concluded, will be on file in the Utilities Unit for reference.

2. Project Contract Basis There will be some utility facilities which will be adjusted as a contract item. These will ordinarily be associated with city or county owned water and sewer line facilities. Such items as fire hydrants, water turnoffs and meters can continue to be adjusted as construction items, however, the Utilities Unit must be advised of this so that they can prepare the necessary utility agreements between the parties, thus establishing the distribution of cost participation and acceptance of highway plans by the utility company. The road designer will be advised by the Utilities Unit when it is

necessary to adjust certain portions of utilities by the contract basis. The limits of these adjustments will be designated so that the road designer can develop adequate plans and a cost estimate. Twelve sets of plans and an original copy of the cost estimate, as well as a transmittal memo, will be furnished to the Utilities Unit by the road designer. The Utilities Unit will then incorporate the plans and estimate into a special utility agreement between the utility company and the Department of Highways.

In the event that the road designer decides to adjust such items as fire hydrants, water turnoffs, water meters, manhole covers and such as construction items, the Utilities Unit must be furnished with twelve sets of plans and a cost estimate for agreement purposes.

3. Unusual Situations There will, undoubtedly, be instances where there will be doubt as to who should initiate the action for adjustment of utility-like facilities. In these cases, the road designer should arrange to meet with a representative of the Utilities Unit so that the division of responsibility can be worked out and provision made to eliminate the conflict. As far as the handling of private water and sewer service line facilities and service connections are concerned, reference is made to Mr. J. R. Beckert's memorandum dated August 1, 1968, to Mr. Ed Miller. This letter is self-explanatory and clearly indicates the procedure which must be followed when adjusting conflicting private service line facilities on public rights of way and the replacement of nonconflicting private service line facilities on public right of way. In both instances, the Preconstruction Section has the responsibility of seeing that program documents and negotiations with private owners are concluded on the above procedures.

UTILITIES AGREEMENT FORM

Form U-1 59
Revised 69

This form is the standard utility agreement and is to be executed by authorized personnel of both parties, indicating that all the provisions contained therein have been complied with.

Waiver of Hearing Form

After proper execution, the intent of this form is to indicate that the utility involved will not contest the removal or relocation of their facilities as provided for under Chapter 254 of the 1957 Session Laws of Montana. This form is included as a part of the agreement.

Agreement Form

This form is self-explanatory and is executed and used only when no expired service life is applied, otherwise the form is omitted as a part of the final agreement.

Form U-1 59
Revised 72

STATE OF MONTANA
DEPARTMENT OF HIGHWAYS
UTILITIES AGREEMENT

FEDERAL-AID PROJECT PROGRAMMED_____

An agreement between_____and the Montana Department of Highways for changing and/or relocating your facilities as required by the construction of a Federal-aid Road Project under the Federal Highway Act of November 9, 1921.

The_____hereinafter referred to as the "Company" and the MONTANA DEPARTMENT OF HIGHWAYS, hereinafter referred to as the "Department", hereby agree as follows:

1. That the Department will submit a project for construction of the road known as_____in_____County and designated as Federal-aid Project_____, and will recommend the approval by the Federal Highway Administration for construction with State funds and Federal funds apportioned to the State in the Federal Highway Act of 1944, or subsequent amendments.

2. That, due to the construction of this project, certain adjustments of the existing plant of the Company will have to be made where said plant now occupies the existing and/or proposed highway right of way. Federal Highway Administration's Policy and Procedure Memorandum 30-4 and the laws of the State of Montana prescribe the requirements governing the adjustments under this agreement.

3. The adjustment (does)(does not) cover a major and independent segment of the utility system. SEE ATTACHED

4. That unless hereafter specifically indicated, the Company will make any necessary adjustments in its plant, as required by the proposed construction, with its personnel, construction or maintanance crews and at its standard schedule of wages and working hours and working in accordance with the terms of current employee agreements. The total estimated cost at this time is $_____. Proportionate participation is: STATE $_____and COMPANY $_____. A copy of a cost estimate and plans indicating plant adjustments are hereby attached as "Exhibit A" and made a part of this agreement by this reference. The State's obligation under this agreement shall be in accordance with all applicable State and Federal laws in existence on the date of execution of this agreement. Should all, or any portion, of said laws be repealed or declared unconstitutional by a Court of competent jurisdiction, payment shall be made in accordance therewith.

5. The utility shall indicate which of the following methods will be used to accomplish the required work:

☐ (a) SOLICITED BIDS: The Company requests, subject to prior approval of the Division Engineer of the Federal Highway Administration and the Department that a portion, or all changes to the properties of the utility company, and all work incidental to such changes may be performed by a contractor paid under a contract let by the utility company. (Check appropriate item in Section 6)

☐ (b) CONTINUING CONTRACTS: The Company requests, subject to prior approval of the Division Engineer of the Federal Highway Administration and the Department that a portion, or all changes to the properties of the utility company and all work incidental to such changes, shall be made by employing existing continuing contracts under which certain work is regularly performed for the utility company and under which the lowest available costs are developed. (Check appropriate item in Section 6).

☐ (c) UTILITY FORCES: All work under this agreement will be done by the forces of the utility company. (Check appropriate item in Section 6).

6. This work, as described on the attached estimate, will be done with the utility's own forces or a combination thereof as described below: (Check one)

(a)_____All work will be done with utility company forces.
(b)_____All work will be done by a contractor now holding a State-approved continuing contract with the Company.
(c)_____All work will be done by calling for bids from qualified outside contractors. Attached are copies of the two lowest bids.
(d)_____All work will be done by using a combination of utility forces and a State-approved continuing contractor's forces or the utility will call for bids and attach the low bid or two lowest bids.
(e)_____All work will be done as follows: The utility company does not know, at this time, whether all or any part of the work will be carried out by utility company forces. If all, or any part, is let to outside contractors, the lowest bids will be submitted to the Department, along with a letter setting forth how all work will be concluded. Written approval will be secured before any work is started.

REMARKS:

7. That the Department will either reimburse the Company for actual costs involved, or if Utilities Agreement is concluded on a lump sum basis, the reimbursement will be paid on a lump sum amount, conforming with the requirements of Policy and Procedure Memorandum 30-4 and amendments thereto, as issued by the Federal Highway Administration. The billing is to be submitted in accordance with the provisions of Section 7, paragraph (g) of said Memorandum, under subsection numbered_____.

8. It is agreed between the parties hereto that this agreement (is)(is not) concluded on a lump sum basis in accordance with the provisions of Section 7, paragraph (g) of Policy and Procedure Memorandum 30-4.

9. That the Company shall construct the most economical type of facilities in the new location as will satisfactorily meet the same service requirements as the present facilities. Certifications to this effect shall be included in billing for reimbursement of work performed and actual cost incurred by the Company.

10. That all cost records of the Company pertaining to this project will be subject to inspection at any time by representatives of the Department and the Federal Highway Administration.

11. FEDERAL REGULATIONS provide that before participating reimbursement may be made to a state for the cost of work performed by a utility company, the cost records and accounts of the utility company will be audited by a representative of the Federal Highway Administration and/or the Department for the determination of actual, reimbursable costs to the State. It is the duty and a requirement of the utility company to

prepare and retain a complete cost record covering the entire cost of moving their facilities. This record is to be kept by the utility company for auditing purposes and final payment to the utility company will be based on the approved audit.

12. To avoid delay in paying utility invoices and to expedite audit by Federal and State auditors, the following must be complied with:

(a) No actual work is to be performed under this agreement until written authority to proceed is received from a representative of the Department.

(b) Accurate accounts of all salaries, material and equipment rental charges for the work performed, shall be kept at all times. Often, when facilities are moved at State expense, the utility company must move additional facilities at their own expense due to change in alignment. When this occurs, the charges may be prorated according to the lengths moved, with the exception of any extraordinary cost which could be charged to another portion of the work.

(c) When equipment is used on the work, reimbursement shall be in accordance with paragraphs 12a, 12b, 12c, 12d and 12e of Policy and Procedure Memorandum 30-4.

(d) All invoices from various suppliers covering materials used on the work should be kept for audit purposes in order to check bills rendered the State. When permanent stock record cards are kept on materials, these shall be adequate.

(e) New materials replacing existing materials will require an explanation for the necessity of new material replacement. Where credit for materials removed is not allowed, an explanation will be required.

(f) If practical, bills covering the actual cost of moving the plant are to be submitted to the State within 30 days after all work has been completed. However, it is requested that no more than 90 days elapse before bill is submitted.

13. The utility, for itself, its assignees and successors, hereby covenants and agrees that it is fully aware and apprised of Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d to 2000d-4 and Title 15, Code of Federal Regulations, Part 8, issued in implementation to said Act. The utility further covenants and agrees that it will fully comply with the said Act and the Regulations of the Department of Transportation issued thereunder, which Act and Regulations are herein incorporated by this reference and made a part hereof.

IN WITNESS WHEREOF, the parties hereto have affixed their respective corporate names and seals through their duly authorized officer, this_____day of_____ _____, A.D., 19_____.

ATTEST:

_____ BY_____

ATTEST: STATE OF MONTANA DEPARTMENT OF HIGHWAYS

_____ BY_____

Authorized Signature

WAIVER OF HEARING

The undersigned utility does hereby waive written notice of hearing under the provisions of Section 32-2414 RCM, 1947, relative to the relocation of its facilities_____

_____

from the Montana State Highway right of way, which facility must be adjusted to avoid conflict or interference with the construction or reconstruction of Federal-aid Highway Project No._____

_____

in_____County.

DATED at_____,Montana, this_____day of _____, 19_____.

By_____

_____ _____

(Project Number) (Date)

A G R E E M E N T

Due to the type of construction provided for in this agreement, it is mutually agreed between the Utility Company and the State that no expired service life to the Utility is provided by the changes contained herein.

ATTEST:

_____ BY_____

ATTEST:

STATE OF MONTANA
Department of Highways

_____ BY_____

Utilities Unit Manager

STATEMENT
OF
UTILITY PROPERTY INTEREST

of_____
(Utility Name)

Highway Project No._____ Highway Project Name_____

Highway Station_____ To Highway Station_____

1. Utility Description of Line Segment:_____

_____

_____

2. The Utility claims to have acquired a property interest in the land occupied by its above-designated facility, the "damaging" or taking of which is compensable in eminent domain because of the following facts:

A. Written instrument

1. Recorded
Vol:_____Book:_____Page:_____County_____
2. Unrecorded
If copy not attached, please explain_____

_____

_____

3. Other facts_____

_____

B. No written instrument

1. Date of original occupancy_____
Has this occupancy been continuous? Yes_____No_____

2. Was original entry on land with owner's permission? Yes__No__Unknown____
If not, why not?_____

_____

_____

C. Are said facilities visible? Yes_____No_____

D. Any other facts:

_____

_____

_____

To the best of my knowledte, the above information is accurate as of_____
(date)

THE_____
Utility Company or Co-op

BY_____

_____
Title

CERTIFICATE - UTILITY COMPANY PROPERTY INTEREST

Project Number

Project Name

Name of Utility

Name or Description of Facilities

In accordance with the requirements of Section 71, (1) & (2) of PPM 30-4, dated February 14, 1969, I hereby certify that:

From the facts supplied to the State of Montana Department of Highways by the said Utility, named above, including statements, affidavits representations by its agents, other written proof and from the opinions of the State's Attorneys, based upon all of the evidence concerning the Utility's facilities in question which is on file with this Department, it is my determination that the said Utility's facilities here in question have a non-possessory property interest which is compensable in eminent domain under Montana Law.

Title: _____ Date _____

S. H. Comm.—Form 4 A

INTER-DEPARTMENTAL MEMORANDUM

STATE HIGHWAY COMMISSION OF MONTANA

From Plans Unit

Date

To Utilities Unit

Subject:

We have estimated that the following amount will be required for the cost of incidental construction on the above project:

POWER_____

POWER_____

TELEPHONE_____

TELEPHONE_____

GAS_____

OIL_____

WATER_____

SEWER_____

RAILROADS_____

STREET LIGHTS_____

INCIDENTALS FOR AGREEMENT_____

MISCELLANEOUS_____

TOTAL AMOUNT REQUESTED: $_____

Avoid Verbal Instructions

ENGINEERING ESTIMATE - EXAMPLE ONLY

1. Review Conference with_____and MDH representatives. Prepare and submit cost estimate and related data.

Designer - estimated 24 hours at $9.00	$ 216.00
Office Engineer - estimated 6 hours at $10.75	64.50
Transportation - estimated	15.00
SUBTOTAL	$ 295.50

2. Preparation of Plans, Specifications and Bidding Documents for obtaining bids for contractors, obtaining approval of these documents from _____, Montana, State of Montana Department of Highways and Federal Highway Administration.

Office Engineer - estimated 2 hours at $10.75	21.50
Designer - estimated 24 hours at $9.00	216.00
Draftsman - estimated 24 hours at $7.50	180.00
Typing, etc. - estimated 12 hours at $6.50	78.00
Transportation - estimated	15.00
Reproduction Costs - estimated	20.00
SUBTOTAL	$ 530.00

3. Review work in field with interested contractors

Project Engineer - estimate 6 hours at $9.00	54.00
Transportation - estimated	15.00
SUBTOTAL	$ 69.00

4. Receipt of bids and submission of cost data to State of Montana Department of Highways and Federal Highway Administration.

Office Engineer - estimated 16 hours at $10.75	172.00
Typing, etc. - estimated 8 hours at $6.50	52.00
SUBTOTAL	$ 224.00

5. Preparation of contract documents

Office Engineer - estimated 6 hours at $10.75	64.50
Typing, etc. - estimated 6 hours at $6.50	39.00
SUBTOTAL	$ 103.50

6. Construction Supervision and Staking

Staking Crew - Estimated (3 men) 6 hours at $22.50	$ 135.00
Project Engineer - Estimated 60 hours at $9.00	540.00
Transportation - estimated	145.00
SUBTOTAL	$ 820.00

7. Compaction Tests on Backfill

Laboratory test for standard proctor - estimated	25.00
Field compaction test - estimated 18 at $15.00	270.00
Transportation -estimated	35.00
SUBTOTAL	$ 330.00

8. Preparation of final estimates including construction and engineering costs to submit to the Federal Highway Administration and the State of Montana Department of Highways.

Office Engineer -estimated 12 hours at $10.75	129.00
Typing - estimated 8 hours at $6.50	52.00
SUBTOTAL	$ 181.00
TOTAL	$2,553.50

SAMPLE OUTLINE FOR ESTIMATING AND BILLS
STATE OF MONTANA DEPARTMENT OF HIGHWAYS

NOTE: This sample has been prepared in accordance with P.P.M. 30-4 of the Federal Highway Administration and is only intended to show the approved make-up and form for the estimate and the billing which is to be presented when utilities are moved because of highway construction. The labor classification, materials, etc., are shown only to illustrate an example, and are not to be construed as approved or complete.

Reference to P.P.M. 30-4	
	(COMPANY NAME) (Address)
	To: Montana Department of Highways (submit through highway office which gave authority for work).
14-b.	Cost of rearranging power (or telephone) facilities because of construction of Highway Project_____, the_____Road in_____ County.
14-b.	Work started (show on bill only the date of first claimed cost).
14-b.	Work completed (show on bill only the date of last claimed cost).
14-b., 14-c.	Records available for audit at (location of cost records for bill only).
8-b., 14-b.	Costs recorded under Work Order No. (show on bill only the Company Work Order No.).
10-a.	Labor Costs

	Classification	Hours	Rate	Amount
	Engineer (Staking line)	x	x.xx	xx.xx
	Laborer (Staking line)	x	x.xx	xx.xx
	Working Foreman	x	x.xx	xx.xx
	Lineman	x	x.xx	xx.xx
	Linemen	x	x.xx	xx.xx
	Groundmen	x	x.xx	xx.xx
2-m	Laborers (on job site)	x	x.xx	xx.xx
	Laborer (restoring salvaged material)	x	x.xx	xx.xx
	Clerk	x	x.xx	xx.xx
	Steno	x	x.xx	xx.xx
	Sub-total Direct Labor Charges			xxx.xx

10-b. Payroll Overhead - Company Paid Benefits:

Vacation and Sick Leave	x.xx%	
Company Paid Health and Accident Insurance	x.xx%	
Company Sponsored Retirement Plan	x.xx%	
Workman's Compensation	x.xx%	xx.xx%

Social Security & Unemployment Taxes:

F.I.C.A.	x.xx%	
Federal Unemployment	x.xx%	
State Unemployment	x.xx%	xx.xx%
		xx.xx%

Payroll Additives: xx.xx% of xxx.xx xxx.xx

2-n Overhead allowance to cover applicable indirect costs: xxx.xx

x.xx% of Total Payroll costs (xxx.xx)

Note: 1

11-a. Materials Issued

Quantity	Description	Unit Price	Amount
x	35-6 Poles	xx.xx	xx.xx
x	Crossarms, 8'-6 Pin	x.xx	xx.xx
x	Anchor w/rod	x.xx	xx.xx
x	Bolts, Crossarm, 12"	xx.xx	xx.xx
xxx	3/8" Guy Wire	.xx	xx.xx
xxx	#6 H.D. Copper Wire	.xx	xx.xx
			xxx.xx

11-i. Handling costs on material issued: x% on xxx.xx xx.xx

11-b. Materials Recovered

x	35-6 Poles	xx.xx	xx.xx(Cr.)
x	35-6 Poles	x.xx	xx.xx(Cr.)
x	Crossarms 8'-6 Pin	x.xx	xx.xx(Cr.)
xxx	#6 H.D. Copper Wire	.xx	xx.xx(Cr.)
			xxx.xx(Cr.)

Net Cost for Materials xxx.xx

12. Equipment Costs

Unit No.	Type	Miles or Hours	Rate	Amount
14	Chev. ½ Ton Pickup	xx	.xxx	xx.xx
25	Ford Line Truck	xx	.xx	xx.xx

Sub-Total Equipment Costs xx.xx

Total Cost of Relocation because of Highway Construction xxx.xx

Note: Of the seven poles relocated, four were on company secured right of way and three were originally on public right of way. The total cost should then be split as follows:

4/7 x xxx.xx - xxx.xx for cost of relocation of poles originally on private right of way.
3/7 x xxx.xx - xxx.xx for cost of relocation of poles originally on public right of way.
Allocation of Costs:

State:	100% of xxx.xx	xxx.xx
	75% of xxx.xx	xxx.xx
		xxx.xx
Company:	25% of xxx.xx	xxx.xx
		xxx.xx

SAMPLE ONLY

PAYMENT FOR RELOCATION OF UTILITY FACILITIES

General Rules:

Utility facilities which occupy a publicly owned right of way and must be relocated as a result of highway construction will be paid for as follows:

75% of the cost, highway funds 25% of the cost, owner of utility

1 - "Utility" as used in this area includes only utilities which are occupying a public right of way, located thereon as a result of an old 1893 statute which allows certain utility facilities to occupy public rights of way. The term "Utility" has previously been interpreted not to include television cable lines, pipelines, or telephone booths, etc.

2 - In some cases, utilities or private pipelines may occupy highway right of way on the basis of a prior property right which has never been cleared. In this case, such lines must be relocated at 100% highway cost because they are on the ground as a matter of basic property right.

3 - In some cases, pipelines, private water lines, and other utilities or pseudo-utilities occupy public right of way on the basis of revocable permit or without any right to be there whatever. No payment for relocation of these facilities is required. They are notified that their right to occupy the right of way is terminated and ordinarily given the option of relocating in a manner acceptable to the highway agency and at their sole cost, or removing their facilities completely from our property.

4 - Utilities such as sewer or water service which cities or other governmental units provide for the residents of a given area, normally for a charge, are legally located the same as private utilities within the meaning of the relocation statute and the 25% contribution toward the relocation cost is required by law from such local governmental bodies in the same way it is required from a private utility.

5 - Utilities or other facilities which occupy private right of way or right of way other than public street or highway rights of way are handled on a basis of the existence or lack of valid property right. The relocation statute does not apply to these properties.

Listed above are a few general rules and a few exceptions in the area of payment for utility relocations. There are a number of relatively fine legal distinctions involved in this area. Please refer any questions or doubtful cases involving utility relocations and compensations therefore to the Right of Way Section, Helena.

FORREST H. ANDERSON
GOVERNOR

MONTANA HIGHWAY COMMISSION

HELENA, MONTANA 59601

H. J. ANDERSON
DIRECTOR OF HIGHWAYS

February 26, 1968

IN REPLY REFER TO:

Locked Gates for
Utility Access
From Interstate
Ref. 60-REC

Montana Utility Companies:

Gentlemen:

Some misunderstanding seems to exist regarding provision for utility access by means of locked gates along the controlled access Interstate System in Montana. Present regulations do allow for the provision of such access where it can be shown that it is the only reasonable means of maintaining the utility facilities in question. It is our hope that by communicating more information on this subject, we can work together more effectively so that the ultimate product in terms of both highway and utility facilities can be used and operated safely, efficiently, and in conformance with the requirements which govern access from the Interstate main line.

At the time utility relocation is being considered in connection with an Interstate project, consideration should be given to availability of access for maintenance of utility facilities. In most cases, the facilities are accessible from other public roads or the terrain is not rough enough to prevent vehicles from being driven to the line. In a few cases, especially in the mountainous area of western Montana, extremely rough terrain and lack of a usable local road network creates situations where utility facilities cannot reasonably be maintained without access being provided from the Interstate main line. The locked gate for utility access was intended to meet this kind of need.

The Montana Highway Commission is willing to provide these locked gate accesses where it can be demonstrated that there is no other reasonable means of access to the utility facilities. In order to provide these accesses, the need for them should be recognized and they should be requested sufficiently in advance of our contracting the highway project for us to put them on our plans and obtain approval of them. Since Washington, D. C. level approval is required for any change in the access control of a Federal-aid Interstate Project after the project has been let to contract, it is most desirable that these needs be recognized and included in our planning. Post contract approval of these facilities requires a great deal of time and explanation, and is quite difficult to obtain. Our Right of Way Procedure Memorandum on this subject dated September 1, 1967, was intended

GEORGE VUCANOVICH, CHAIRMAN
HELENA

H. S. HANSON, VICE CHAIRMAN
BILLINGS

G. R. COONEY
BUTTE

WILLIAM M. KESSNER
BLACK EAGLE

R. E. COFFEY
WOLF POINT

JOHN D. WHEELER, SECRETARY
HELENA

to instruct our field personnel as to what would be required to make application to the Bureau of Public Roads for approval of locked gate utility access after the project had gone to contract. Although some of the requirements involved are the same, it was not intended that this procedure memorandum apply to the normal case where a utility company requests locked gate access prior to contract.

Another thing which we must have in order to properly support our request for the locked gate access is documentation which demonstrates that no other feasible means of access to the utility facilities is available and that the locked gate access requested is the only feasible solution to the access problem. We have found that a statement to this effect is ordinarily not sufficient. The presentation to support a locked gate access must, as a minimum, include a sufficient explanation of the topography, lack of other public road access, natural barriers, and other factors which demonstrate that the locked gate access requested is the only reasonable way of obtaining access to the facilities. As is true with any other presentation designed to convince a third part who may not be familiar with the area or factors being described, maps, sketches, and photographs can help greatly in conveying what we are trying to communicate. The approximate frequency of expected use, and the type vehicles expected to utilize the access point are other factors which should be covered.

To discourage improper public use of these points, a regular highway approach is not built. The location is selected where a shallow ditch or daylight section enables easy vehicular access from the roadway shoulder to the locked gate. Where a utility company requests a locked gate, the sketch they submit should show the approximate highway station, or the limits of the area where the access point will be of greatest benefit to the utility company.

Our utility personnel will cooperate with you by providing information regarding highway access planning, and are available to give their assistance or suggestions in connection with preparation of the information outlined above.

Sincerely yours,

LEWIS M. CHITTIM, P. E.,
State Highway Engineer

By_____
ROBERT E. CHAMPION, P. E.,
Chief Right of Way Agent

REC:lr

LOCKED GATE REQUEST
FOR UTILITY ACCESS FROM INTERSTATE

Date_____
Project No._____
Ref. 65-RCH

Mr. Robert E. Champion, P. E.,
Right of Way Section Supervisor
Department of Highways
Helena, Montana 59601

Dear Mr. Champion:

Please consider this form, as checked below, a formal request for a locked gate access for our facility on a proposed Interstate Highway.

1. Description of Utility to be serviced by locked gate: _____

_____

2. Largest type of service vehicle used: _____

3. Number of times per year gate to be used: _____

4. Stationing and location of proposed gate: _____

5. Is proposed gate "at-grade"? Yes_____ No_____

6. Could facility be moved to eliminate the need for a locked gate? Yes____ No____

7. If yes, at what cost? _____

8. How far away is nearest service or frontage road? _____ (miles)

9. Are further details listed on a sheet other than this form? Yes____ No____

10. If yes, see attached details.

UTILITY COMPANY_____

By_____
(Title)

***

RW 133

COMMON USE AGREEMENT

(To be Completed by Mont. Dept. of Hwys.)

Highway Project No._____
Designation_____
Highway Mtce. Sec. No._____

County_____
Sec._____, Twp._____, Rge._____
Federal-aid Rte. No._____

THIS AGREEMENT, made and entered into this_____day of_____ 19_____, by and between_____hereinafter called COMPANY and the STATE OF MONTANA, acting by and through its DEPARTMENT OF HIGHWAYS, hereinafter called STATE.

WITNESSETH

WHEREAS, COMPANY is the owner of certain easements or in possession of certain right of way, hereinafter referred to as COMPANY'S EASEMENT, and described as follows:

and

WHEREAS, STATE has acquired certain real property in fee simple for highway purposes in the vicinity of_____, County of_____, on _____Highway Project Number_____, between approximate Highway Stations numbered_____and_____hereinafter referred to as HIGHWAY RIGHT OF WAY, and

WHEREAS, HIGHWAY RIGHT OF WAY occupies and bounds a portion of COMPANY'S EASEMENT and is therefore subject to that portion of said EASEMENT which is hereinafter referred to as AREA OF COMMON USE and particularly described as follows:

WHEREAS, STATE and COMPANY agree that it is in the mutual interest of both parties hereto to identify the mutual respective rights and obligations of the parties in order to avoid conflict in the future exercise thereof.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, STATE and COMPANY hereby agree as follows:

1. COMPANY hereby consents to the construction, reconstruction, maintenance and use by STATE of the above referred to Highway Project, over, along and upon COMPANY'S EASEMENT in the AREA OF COMMON USE subject to the terms and conditions herein contained.

2. STATE acknowledges COMPANY'S title to COMPANY'S EASEMENT in said AREA OF COMMON USE and the priority of COMPANY'S title over the title of STATE therein. COMPANY reserves the right and shall continue to have an easement to use said AREA OF COMMON USE in common with the public use of said highway for all of the purposes for which COMPANY'S EASEMENT was acquired, without any further agreement or permission from STATE.

3. In the event of major repair, reconstruction or removal of any of COMPANY'S facilities located within the right of way of said Highway Project whereby COMPANY deems it necessary to enter upon the portions of the right of way of the said Highway, COMPANY shall, except in case of emergency, give advance notice to the STATE'S Division Construction Section where performance of such work may endanger or significantly interfere with highway traffic. In all cases, COMPANY shall make adequate provision for the protection of the traveling public.

4. This policy applies to all portions of said Highway Project, except controlled access portions of the Interstate System. Construction work within controlled access limits is allowed within access control limits only with prior written permission.

5. In the event that the future use of said highway shall at any time or times necessitate a relocation, reconstruction or removal of any of COMPANY'S facilities located in said AREA OF COMMON USE, STATE shall notify COMPANY in writing of such necessity and agree to reimburse COMPANY on demand for its costs incurred in complying with such notice. COMPANY will provide STATE with plans of its proposed relocation and an estimate of the cost thereof; and, upon approval thereof by STATE, COMPANY will promptly proceed to effect such relocation, reconstruction or removal.

6. In the event any of COMPANY'S facilities will be located outside of said AREA OF COMMON USE, STATE shall: (1) enter into the standard form of common use agreement covering the new location of COMPANY'S EASEMENT within the highway right of way (2) provide a good and sufficient easement for COMPANY within the highway right of way or across STATE owned property if necessary to replace COMPANY'S EASEMENT or any part thereof, or (3) reimburse COMPANY for all costs incurred to acquire the necessary easement for new right of way for its facilities.

7. Except as expressly set forth herein, this agreement shall not in any way alter, modify or terminate any provision of COMPANY'S EASEMENT. STATE and COMPANY shall mutually occupy and use said AREA OF COMMON USE in such a manner as not to interfere unreasonably with the rights of the other party. Nothing herein contained shall be construed as a release or waiver of any claim for compensation or damages which COMPANY or STATE may now have or may hereafter acquire due to the construction of additional facilities or the alteration of existing facilities by either STATE or COMPANY in such a manner as to cause an unreasonable interference with the use of said AREA OF COMMON USE by the other party.

8. This AGREEMENT shall inure to the benefit of and be binding upon the successors and assigns of both parties.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed, in duplicate, by their respective officials thereto duly authorized.

STATE OF MONTANA
DEPARTMENT OF HIGHWAYS

By_____

_____
Title

_____
Utility, Cooperative or Common Carrier

By_____
Title

STATE OF MONTANA)
) ss.
County of Lewis & Clark)

On this day_____of_____,19___, before the undersigned Notary Public for the State of Montana, personally appeared_____ for the State of Montana Department of Highways and acknowledged to me that he executed the same.

In witness whereof, I have hereunto set my hand and affixed my notarial seal the day and year in this certificate first above written.

_____
Notary Public for the State of Montana
Residing at_____
My Commission Expires_____

STATE OF MONTANA)
) ss.
COUNTY OF)

On this_____day of_____,19,_____,before the undersigned Notary Public for the state of Montana, personally appeared_____, for the corporation which executed the foregoing instrument, and acknowledged to me that such corporation executed the same.

In witness whereof, I have hereunto set my hand and affixed my notarial seal the day and year in this certificate first above written.

Notary Public for the State of Montana
Residing at_____
My Commission Expires_____

RW 131

NOTICE OF UTILITY OCCUPANCY AND USE OF STATE HIGHWAY SYSTEM RIGHT OF WAY

TO: DIVISION CONSTRUCTION SECTION SUPERVISOR
Montana Department of Highways
_____, Montana

Highway Project No._____
Highway Designation_____
Highway Station_____to_____

_____ proposes to occupy and use State
(Name of Utility, Cooperative or Common Carrier)
Highway System right of way in accordance with the provisions of Section IV of the Montana Department of Highway's "Regulations Governing Occupancy of State Highway System Right of way by Utility Facilities", as follows:

Description of Facility:
1. Overhead_____; 2. Underground_____
a. Telephone_____
b. Electric_____
c. Natural Gas_____
d. Water_____
e. Sewer_____
f. Other (specify)_____

Utility Facility Location: (to be supplied by utility)
Section_____, Township_____, Range_____, County_____
Highway Name or Route No._____
Mile Post_____to Mile Post_____.(Where available)

Drawings:
Utility construction drawings attached hereto and incorporated herein by this reference:
Prints No._____Dated_____
Prints No._____Dated_____
Date Submitted_____; _____
Name of Utility, Co-op or Common Carrier
By_____; Title_____

.....

Preliminary agreement to the location of utility facility given:

1. By visit on_____(date) by_____(Name)
2. By telephone call on_____(date) by_____(Name)
3. After field inspection on_____(date) by_____(Name)

To:_____(Name and/or Title)

_____(Name of Utility, Co-op, or Common Carrier)

_____(Mailing Address)

1. Occupancy and use of State Highway System right of way as described herein is approved.

Date_____; By_____
Division Construction Section Supervisor,
State of Montana Department of Highways

2. Occupancy and use of State Highway System right of way as described herein is not approved for the reasons listed on the reverse side hereof.

Date_____; By_____
Division Construction Section Supervisor
State of Montana Department of Highways

SUPPLEMENTAL AGREEMENT

THIS SUPPLEMENTAL AGREEMENT, made and entered into this_____day of _____, 19____, by and between_____, hereinafter referred to as the "UTILITY COMPANY", and the STATE OF MONTANA, herein represented by and acting through its Department of Highways, hereinafter referred to as the "STATE".

WITNESSETH:

WHEREAS, STATE and UTILITY COMPANY have previously entered into an agreement dated the_____day of_____19____, concerning the relocation and reconstruction of certain of UTILITY COMPANY'S facilities which were interfering or conflicting with the construction of Federal-aid Highway Project No. _____; and

WHEREAS, it may be necessary for UTILITY COMPANY, after its facilities are installed, to enter upon the right of way of the Federal-aid Highway to repair, maintain, reconstruct or remove said facilities, in such manner as to disrupt and interfere with the other uses for which the Federal-aid Highway was intended; and

WHEREAS, STATE and UTILITY COMPANY agree that it is in their interest and the interest of the general public that certain standards and controls be established regarding the UTILITY COMPANY'S use of the public right of way during the repair, maintenance, reconstruction and removal of the facilities of UTILITY COMPANY within Federal-aid Highway Project No._____.

NOW, THEREFORE, in consideration of the premises and covenants herein contained, STATE and UTILITY COMPANY agree as follows:

(1) In the event of major repair, reconstruction or removal of any of UTILITY COMPANY'S facilities located within the right of way of said Highway whereby UTILITY COMPANY deems it necessary to enter upon the right of way of the said Highway, UTILITY COMPANY shall, except in case of emergency, give advance notice to the STATE'S Division Construction Section where the conduct of major repair, reconstruction or removal work may endanger or significantly interfere with highway traffic. In the case of major realignments or large plant revisions, regular procedures involving submittal to and approval of sketches by the STATE'S Division Construction Section Supervisor should be followed. The requirements of this section are not intended to cover routine repair, maintenance, reconstruction or removal of any of UTILITY COMPANY'S facilities located within highway right of way. This policy applies to all portions of the State Highway System, except controlled access portions of the Interstate System. Construction work within access control limits is allowed within access control limits only with prior written permission concurred in by the Federal Highway Administration. Maintenance work, except in emergency situations, may not be conducted from within access control limits.

2. UTILITY COMPANY agrees to perform all repair, maintanance, reconstruction and removal of its facilities in accordance with any reasonable procedure which STATE deems necessary to prevent undue interference, delay, and safety

hazards to the traveling public on said highway right of way.

(3) Insofar as the interests of STATE and the traveling public are concerned, UTILITY COMPANY agrees all work performed under this Agreement, except those set out under Paragraph (1) shall be coordinated with the Division Construction Section Supervisor of the Department of Highways and his authorized representatives, whereby the STATE, in accordance with the current Standard Specifications for Road and Bridge Construction, will indicate barriers to be erected, manner in which lighting is to be provided at night, indicate placing of flagmen and watchment, manner in which traffic is to be handled, and shall specify to UTILITY COMPANY how road surface is to be replaced if it is disturbed during operations, but said coordination shall, in no way, operate to relieve or discharge UTILITY COMPANY from any of the obligations assumed by acceptance of this Agreement.

(4) UTILITY COMPANY agrees to return the right of way of said highway to its original condition as near as practicable and to the satisfaction of the STATE at the completion of the work contemplated by this Agreement.

(5) STATE and UTILITY COMPANY agree that the notice requirements set out in Paragraph (1) of this Agreement shall not apply when emergency repairs to the facilities of UTILITY COMPANY are necessary; UTILITY COMPANY agrees that it will notify the STATE as soon as possible, in an emergency situation, of its entry upon the right of way of said highway and shall nevertheless be bound by the remainder of this Agreement.

(6) UTILITY COMPANY and STATE agree that this SUPPLEMENTAL AGREEMENT shall by this reference be made a part of the basic agreement dated the_____ day of_____, 19____.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed the day and year first above written.

ATTEST:

_____ _____

ATTEST:

STATE OF MONTANA
Department of Highways

_____ _____

Right of Way Section Supervisor

RW 95 A-Rev.

CERTIFICATE

SCHEDULE OF UTILITY AGREEMENTS

PROJECT_____

UTILITY COMPANY	APPROVED/TO BE APPROVED BY UTILITY COMPANY	APPROVED/TO BE APPROVED BY FEDERAL HIGHWAY ADMIN.
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		

UTILITY CONTR. CONSUMMATED	CONTR. APPR. BY FHWA	UTILITY AUTH. TO PROCEED	EST. DATE WHEN RELOCATION COMPLETE	WILL UTILITY EFFECT CONST.
1.				
2.				
3.				
4.				
5.				
6.				
7.				
8.				

Note #1-Projects where the utilities are all moved or where the utility conflict is so minor, it will not constitute any problem.

Note #2-Projects where the utility relocations are not accomplished and where there is significant potential for contractor-utility conflict. However, where contracts covering the relocation of these utilities have been made, it is estimated that the beginning of the contractor's operations on the project will precede final relocation of utility facilities. We have reviewed this matter and it is our opinion that the conflict is not sufficient to unreasonably hinder the contractor or the utility in the performance of the contemplated work. The existence of the utility facilities is evident on the ground and/or from the Department of Highway's construction plans. The Department of Highways and the Utilities involved are both agreeable to cooperating in furnishing prospective bidders additional imformation, or assistance which they may desire regarding these utility facilities

Note #3-Projects where the utility conflict is so serious that the project should not be contracted.

FORREST H. ANDERSON
GOVERNOR

MONTANA HIGHWAY COMMISSION

HELENA, MONTANA 59601

H. J. ANDERSON
DIRECTOR OF HIGHWAYS

June 16, 1969

IN REPLY REFER TO:
Division Utility Agents
Ref. 65-HES

All Utility Companies

Gentlemen:

During the recent meeting of the Montana Liaison Committee in Helena, Mr. Robert E. Champion, Chief Right of Way Agent, told the committee that the State Highway had created a division utility agent position in each of the eleven Highway Divisions in the State. The following persons were appointed to this newly created position:

Missoula	Donald Nelson
Butte	Robert Fisher
Great Falls	Marlin Brackney
Billings	George Jovanovich

In several of the divisions, the duties of the utility agent were assigned to other personnel until such time as the work load dictates the need for someone to be appointed to that position. The men temporarily assigned to this responsibility are as follows:

Kalispell	Howard Stockwell
Bozeman	Daniel Urback
Havre	Dean Nelson
Glendive	Gerald Kuester
Wolf Point	Robert Hanson
Miles City	Arthur Anderson
Lewistown	Mitch Miller

Generally, the duties and respondibilities of the division utility agent will be to act as a representative in the field for the Montana Highway Commission making inspections, reports, audits and coordinating various phases of working where required in order to help implement and carry out right of way encroachment and utility relocation policies. More specifically, the division utility agent will be required to:

1. Investigate reports of utility company activities on Highway System R/W within his division to enable him to determine that such activities are being conducted in accordance with Montana State Highway Commission Regulations.

GEORGE VUCANOVICH, CHAIRMAN
HELENA

H. S. HANSON, VICE CHAIRMAN
BILLINGS

G. R. COONEY
BUTTE

WILLIAM M. KESSNER
BLACK EAGLE

R. E. COFFEY
WOLF POINT

JOHN D. WHEELER, SECRETARY
HELENA

All Utility Companies June 16, 1969

2. Assist the Division Engineer and Division Maintenance Supervisor in processing Common Use Agreements, Joint Occupancy Agreements or Encroachment Permits in accordance with Occupancy Regulations.

3. Expedite processing of estimates for utility relocation work when cost thereof is participated in by the Highway Commission.

4. Assist the Utilities Engineer, where requested, to help in completion of utility agreement between the Utility and the Highway Commission.

5. Coordinate requests for right of way and centerline staking from the utility companies with the Division Construction Engineer.

6. Supervise inspection of utility activities on Highway System right of way as required to assure compliance with the Highway Commission Regulations and Utility Agreements.

7. Inspect and accept salvaged materials.

It is our suggestion that whenever the operations of utility companies and cooperatives necessitate written correspondence with the Highway's division personnel, the correspondence be directed to the appropriate district engineer, attention division utility agent. By addressing the correspondence in this manner, the division utility agent will receive the information and thus be able to expedite the request of the utility company. In instances where it is necessary to have verbal conversation regarding the above utility matters, contact should be made directly with the division utility agent. In order to assist you in making a determination of which district and division you should address your correspondence to, for your particular project, we are forwarding herewith a copy of our construction district and division map for the State of Montana. The subdivision of the district is indicated by a heavy, broken line through the district area. Each one of the districts contains two divisions, except for District 6, which has only one division.

We trust that this procedure will be a means of improving our already good relationship and liaison between utility companies and Highway Department in the State of Montana.

Yours very truly,

LEWIS M. CHITTIM, P. E.,
State Highway Engineer

By_____
ROBERT E. CHAMPION, P. E.,
Chief Right of Way Agent

REC:HES:lr

EXPLANATION OF
FLOW CHART PROCEDURE
OF
RAILROAD AGREEMENT, EASEMENT & ESTIMATE

1. Upon completion of a respective design, the Utilities Unit is furnished railroad application plans by the Preconstruction Section. Sufficient plans are furnished to provide at least one set to each of the personnel of the railroad company which is involved with processing project for approval.

2. If incidental construction (IC) money is programmed and approved, the railroad company involved is furnished plans with a letter of transmittal arranging for a joint field inspection.

3. At a predetermined date, a joint field inspection is made with the representatives of the Utilities Unit, the railroad involved, the Federal Highway Administration and the Division Construction Section to mutually review encroachments on railroad right of way and determine adjustments required to clear construction limits.

4. After determining approximate relocation costs either by actual field engineering or plant experience records, an estimate is submitted by each railroad company involved. Estimates are formulated according to the requirements of Federal Highway Administration's PPM 30-3. Estimates are then incorporated in construction agreement and easement prepared by the railroad company for each specific project.

5. A review is made of each agreement, easement and estimate as to arithmetic, participation costs and compliance with PPM 30-3 and State of Montana legal statutes. Any irregularities are made known to either the railroad company or to the Federal Highway Administration, or both, and corrections are made accordingly.

6. After the railroad agreement, easement and estimate are considered acceptable to the Utilities Unit, it is submitted to the Right of Way Attorney, Appraisal Unit, Property Description Unit and to the Preconstruction Section for review and acceptance

7. Upon the acceptance of all those who are involved in Step 6, the agreement, easement and estimate are then forwarded to the Right of Way Section Supervisor for his execution, after which they are forwarded to the Federal Highway Administration for review of specific items.

8. After the agreement, easement and estimate are returned to the Utilities Unit, they are forwarded to the railroad company for execution by railroad officials.

Flow Chart (Cont'd.)

9. When the executed agreement, easement and estimate are returned, they are forwarded to the Federal Highway Administration for final approval and authorization to proceed with the work.

10. After the agreement and estimate are fully executed by the Federal Highway Administration and returned to this office, ample copies are made to distribute - three to the Division Construction Section, one to the Construction Bureau, one to the Contract Plans Unit and one to the Accounting Bureau. The original agreement, easement and estimate are placed in the railroad file in the Utilities Unit.

11. Those documents which necessitate recording are further duplicated and forwarded to the Land Records Unit for this purpose. The completed railroad file is forwarded to the Right of Way General File for processing and microfilming.

RESPONSIBILITY AND PROCEDURE FOR PREPARING RAILROAD PLANS FOR UTILITIES UNIT BY PRECONSTRUCTION SECTION

The recent processing of state agreements and plan approval associated with state highway projects indicates the need to develop and set down in writing precisely who should take what action in handling of railroad involvements.

In accordance with this need, the following procedure is presented for your consideration and subsequent action necessary to make it operational:

II Railroad Involvements.

A. Railroad Field Notes It is the responsibility of the Preconstruction Section to obtain from the field the necessary field notes to prepare an accurate summary of railroad conflicts with highway construction; therefore, the railroad field notes showing existing railroad facilities should be as complete as possible. These notes are used in the preparation of suitable highway right of way plans for railroad application. The omission of any railroad information from the notes will result in the delay of processing future railroad agreements and the needless expenditure of highway funds. The receipt of any field notes that are not considered adequate to present a clear, concise and complete picture of the railroad situation for a given project should be returned to the appropriate Division Construction Section for further field investigation and survey work.

When construction for a project encroaches on railroad right of way, it is necessary to provide the information required in making an application for an easement or a permit. In some cases, an easement may have been obtained on an existing project. If this is found to be true, there should be copies of such a transaction in the files. All existing easements obtained by the State Highway should be drawn on and labeled on the plans. If the railroad line involved is a main line, easements may not extend closer than fifty feet to the track, but permits are usually granted within a reasonable distance of it. On branch lines, easements to within twenty feet of the track may sometimes be granted. When channel changes are to be made on railroad right of way, the cross sections should include all details such as width, depth, etc. In drawing the proposed easements and permits on the right of way maps, it is necessary that certain required procedures be followed in order to prepare an adequate application to the railroad company.

In cases where the highway centerline crosses the railroad centerline, it is necessary to show the railroad stationing and highway stationing at the point of crossing. The angle of intersection between the two centerlines should also be shown. The road designer, even though he has a set of field notes, should coordinate them with the Bridge Section's bridge and grade crossing notes. In many instances, there are discrepancies in distances, stationing and angles between the two sets of notes. On a parallel encroachment, it is necessary to show distances to the right of way line from the highway centerline and railroad centerline. Equivalent stationing of highway and railroad must be shown where the right of way line breaks.

All railroad facilities should be labeled as to the company or private individual owning them. This information is available from the personnel of the various railroad companies. In some instances, private railroad facilities will be encountered. Similar information must be provided for these facilities in order to process their adjustment as a right of way item. There are times that a section of railroad facilities is either jointly owned or jointly used by several railroad companies. In these instances, all of the information available should be listed and the railroad company which has jurisdiction over the joint usage or jointly owned trackage must be shown.

B. Road Designer Responsibility It is the responsibility of the road designer to see that the Utilities Unit is furnished with accurate and complete railroad application maps. These maps must contain all of the information provided by the railroad field notes. Any omissions or misinformation recorded on the application maps will ultimately result in additional field railroad inspections and thus a delay in processing the railroad agreemant and needless expenditures of highway funds. The designer will see that the railroad application maps conform with the latest road plans and cross sections and any changes in alignment, additions or revisions to the road plans must be reflected therein.

It will be the road designer's ultimate responsibility, before submission of road plans to Contract Plans Unit, to see that appropriate action has been taken to provide for the adjustment of all railroad or railroad-like facilities, etc. which are in conflict with proposed highway construction or which are in such close proximity as to be likely to be damaged by highway construction.

As the various railroad agreements for a project are concluded, the Utilities Unit retains copies which are available for use by the road designer. It is necessary that the road designer thoroughly investigate each project to see that all of the anticipated railroad conflicts are handled on the basis of railroad agreements, contract items or right of way items. Failure to do this might well result in a delay of awarding a project to contract.

C. Common Means of Processing Railroad Conflicts Railroad application maps are generally prepared from the right of way original maps. On these prints, all existing easements should be colored yellow; proposed easements, colored red and proposed permits, colored green. On interstate projects, it will also be necessary to draw a blue line to indicate control of access. One set of the above marked-up right of way maps will be furnished to the Utilities Unit. The remaining sets of right of way maps furnished to the Utilities Unit may be unmarked. The application maps should not, ordinarily, be made and forwarded to the Utilities Unit until after the final road plan-in-hand inspection has been made and appropriate changes made to the road plans, cross sections and right of way maps.

The number of prints required will vary, depending on the number of railroads involved and which railroad is involved. In all cases, three prints will be needed by the Utilities Unit. The following is a list of the railroads most likely to be encountered and the number of prints to be added for each different railroad involved:

Name of R.R.	R/W Plans	Road Plans *	Cross Section Involved
B. N.	6	4	4
Milw.	7	4	4
U. P.	5	4	4
B. A. & P.	5	2	2

* Prints of the road plans should include plan and profile sheets of the encroachment area, title sheet and typical sections.

The road designer should forward the appropriate copies of railroad application maps, cross sections and road plans, together with a memorandum of transmittal to the Right of Way Section Supervisor, attention Utilities Unit for their use in making railroad agreements.

(1) Railroad Relocation Contracts The receipt of the railroad application plans by the Utilities Unit will allow them to arrange for a field inspection with representatives of the railroad company, district and headquarters' personnel. At the time of this inspection, the method of adjusting the conflicting railroad facilities and the acceptance of various permanent and temporary encroachments on railroad right of way will be generally determined.

In some instances, the railroad companies will request additional time to investigate the problems, in order to clear with their management and advise the Department of Highways of the best solution. In any event, the Utilities Unit will advise the Right of Way Section regarding those facilities which must be handled as right of way items; also, the Preconstruction Section, regarding those facilities which must be handled as construction items. The usual railroad facilities will be handled as a part of the railroad agreements in accordance with P.P.M. 30-3 and amendments thereto. As indicated above, copies of the railroad agreements, as they are concluded, will be on file in the Utilities Unit for reference.

(2) Contract Basis There will be some railroad facilities which will be adjusted as a contract item. These will, ordinarily, be associated with drainage and irrigation pipes and fencing. Your attention is specifically directed to the handling of the highway and railroad drainage and irrigation facilities under the trackage as far as contract items are concerned. Generally, all of the railroad companies will allow the highway contractor to adjust or install a new drainage or irrigation pipe under their trackage; however, the Burlington Northern Railway will, generally, never allow the highway contractor to place drainage or irrigation facilities under old Northern Pacific trackage. This work must be accomplished by their Maintenance of Way Organization. The Milwaukee Railroad has voiced some objection to this procedure in the past, but thus far, they have not refused to accept this procedure. On this basis, the right of way application maps will have to provide a working area large enough to allow the highway contractor to install the facility.

(3) Unusual Situations There will, undoubtedly, be instances where the designer will be in doubt as to how the adjustment of railroad facilities should be handled and how temporary and permanent encroachments should be made to the railroad companies. In these cases, the road designer should arrange to meet with a representative of the Utilities Unit so that an agreeable procedure could be worked out and the necessary railroad application maps prepared. In the preliminary stages of the road design, it will often be advantageous to submit our plans to the railroad companies where extensive railroad encroachments or adjustments are involved. This procedure will enable the Department of Highways to coordinate its planning with the railroad companies and will, often times, save considerable work and money towards the development of final plans. Preliminary applications will be handled in the same manner as the usual railroad applications listed above.

STATE OF MONTANA
DEPARTMENT OF HIGHWAYS

UTILITY MANUAL

PART V

MONTANA LAW AND LEGAL OPINIONS

UTILITY POLICY AND PROCEDURE MANUAL

CONTENTS PART V

5. Montana Law and Legal Opinions

5.1 Section 32-2414 74

5.2 Section 32-2415 74

5.3 Section 32-2416 74

5.4 Section 70-301 75

5.5 TV Cable Encroachment - (Non-Utility) 76

Sec. 32-2414. RELOCATION OF UTILITY FACILITIES - HEARINGS - ORDER. (1) After appropriate hearings, the Commission may make and publish reasonable regulations for the installation, construction, maintenance, repair, renewal, or relocation of tracks, pipes, mains, conduits, cables, wires, towers, poles, and other equipment and appliances (hereafter called "facilities") of any utility in, on, along, over across, through or under any project on any of the Federal-aid systems.

(2) The Commission shall give written notice of the place and time of a public hearing to determine the necessity of any relocation of facilities to all concerned not less than twenty days before the hearing. Hearing may be waived in writing by the utility concerned or other interested parties.

(3) After the hearing, the Commission may determine that any such facilities must be relocated. If so, the utility owning or operating the facilities shall relocate them in accordance with the valid order of the Commission. The utility and its successors and assigns may maintain and operate the relocated facilities, with the necessary appurtenances, in the new location.

Sec. 32-2415. RELOCATION COSTS. Seventy-five percent (75%) of all costs of relocation, including the costs of acquisition of new right of way, of dismantling, and of removal, shall be paid by the Commission as a cost of highway construction.

Sec. 32-2416. RELOCATION - DEFINITIONS. For the purpose of the sections relating to relocation of utility facilities, terms are defined as follows:
(1) Utility - includes publicly, privately and co-operatively owned utilities.

(2) Cost of relocation - includes the entire amount paid by the utility properly attributable to the relocation after deducting any increase in the value of the new facility and any salvage value derived from the old facility.

(3) Federal-aid systems - includes the Federal-aid primary system, the Federal-aid secondary system, the Federal-aid interstate system, and urban extensions of all of them.

(4) Interstate system - includes any highway now included or which shall hereafter be included as a part of the National System of Interstate and Defense Highways, provided for in the Federal-Aid Highway Act of 1956 and supplements or amendments.

TELEGRAPH, TELEPHONE AND ELECTRIC LIGHT

AND POWER LINES

Sec. 70-301. RIGHTS OF WAY FOR POLE LINES ALONG STREETS, ROADS AND HIGHWAYS. A telegraph, telephone, electric light, or electric power line, corporation, or public body, or any other person owning or operating such, is hereby authorized to install its respective plants and appliances necessary for service, and to supply and distribute electricity for lighting, heating, power, and other purposes, and to that end to construct such telegraph, telephone, electric light or electric power line or power lines, from point to point, along and upon any of the public roads, streets, and highways in the State of Montana, by the erection of necessary fixtures, including posts, piers, and abutments necessary for the wires. But the same shall be so constructed as not to incommode or endanger the public in the use of said roads, streets, or highways and nothing herein shall be so construed as to restrict the powers of city or town councils.

E. O. PARSONS, Utilities Engineer

November 10, 1958

WALTER MURFITT, Highway Attorney

U-P-TV Cable
Encroachment

This is to advise you that the TV cable is not a utility under the definition of the Statutes of Montana. There is no right in the company to use our right of way. There is no obligation to pay the cost of moving the cables.

Notify the company in writing to remove the TV cable from the right of way as an encroachment.

Sincerely yours,

WALTER MURFITT,
Highway Attorney

WM/ra